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TO THE DRAFT LAW «ON COMBATING HUMAN TRAFFICKING IN THE REPUBLIC OF KAZAKHSTAN» (CRIMINAL AND VICTIMOLOGICAL ASPECT)

Abstract. This article provides the author's commentary (from the standpoint of the criminal-victimological aspect) to the draft law «On combating human trafficking in the Republic of Kazakhstan», developed by an Interdepartmental working group under the leadership of the Ministry of Internal Affairs of the Republic of Kazakhstan.

The concept of the draft law provides for the definition of the circle of persons to whom the provisions of the Law will apply; the establishment of authorized bodies in the field of combating human trafficking, their rights and obligations; the definition of subjects of combating human trafficking and their competence; the introduction of a risk assessment of trafficking in persons and a mechanism for redirecting victims, etc.

The key advantage of the draft law is that its adoption will create the necessary legislative and legal framework to improve the effectiveness of work in the field of combating trafficking in persons, as well as improving national legislation and law enforcement practice in accordance with international standards.

At the same time, the authors highlight a number of recommendations for detailing some of the conflicts identified during the analysis of the draft Law submitted for discussion. In particular, the principles of legal regulation, the use of preventive measures, as well as the optimization of the thesaurus and the improvement of the current industry legislation require systematization and clarification.

Keywords: human trafficking; draft law «On combating human trafficking in the Republic of Kazakhstan»; rights of victims of human trafficking; improvement of industry legislation; criminology; criminal and victimological aspect.

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«ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДА АДАМ САУДАСЫНА ҚАРСЫ ІС-ҚИМЫЛ ТУРАЛЫ» ЗАҢ ЖОБАСЫНА ҚАТЫСТЫ (КРИМИНО-ВИКТИМОЛОГИЯЛЫҚ АСПЕКТ)

Аннотация. Осы мақалада ҚР ІІМ жетекшілігімен Ведомствоаралық жұмыс тобы әзірлеген «Қазақстан Республикасында адам саудасына қарсы іс-қимыл туралы» заң жобасына (криминалық-виктимологиялық аспект тұрғысынан) авторлық түсініктеме беріледі. Заң жобасының тұжырымдамасы заңның ережелері қолданылатын адамдар тобын айқындауды; адам саудасына қарсы іс-қимыл саласындағы уәкілетті органдарды, олардың құқықтары мен міндеттерін белгілеуді; адам саудасына қарсы іс-қимыл субъектілерін және олардың құзыретін айқындауды; адам саудасының тәуекелдерін бағалауды және құрбандарды қайта бағыттау тетігін енгізуді және т.б. көздейді.

Заң жобасының басты артықшылығы – оны қабылдау адам саудасына қарсы іс-қимыл саласындағы жұмыстың тиімділігін арттыру, сондай-ақ халықаралық стандарттарға сәйкес ұлттық заңнаманы және құқық қолдану практикасын жетілдіру үшін қажетті заңнамалық құқықтық негіздер құруға мүмкіндік береді.

Сонымен бірге авторлар талқылауға ұсынылған заң жобасын талдау кезінде анықталған кейбір қайшылықтарды егжей-тегжейлі сипаттауға арналған бірқатар ұсыныстарды бөліп көрсетеді. Атап айтқанда, жүйелеу мен түсіндіру құқықтық реттеу қағидаттарын, алдын алу шараларын қолдануды, сондай-



ақ тезаурусты оңтайландыруды және қолданыстағы салалық заңнаманы жетілдіруді талап етеді.

Түйінді сөздер: адам саудасы; «Қазақстан Республикасында адам саудасына қарсы іс-қимыл туралы» заң жобасы; адам саудасы құрбандарының құқықтары; салалық заңнаманы жетілдіру; криминология; криминологиялық-виктимологиялық аспект.

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К ПРОЕКТУ ЗАКОНА «О ПРОТИВОДЕЙСТВИИ ТОРГОВЛЕ ЛЮДЬМИ В РЕСПУБЛИКЕ КАЗАХСТАН» (КРИМИНО-ВИКТИМОЛОГИЧЕСКИЙ АСПЕКТ)

Аннотация. В настоящей статье дается авторский комментарий (с позиции кримино-виктимологического аспекта) к законопроекту «О противодействии торговле людьми в Республике Казахстан», разработанному Межведомственной рабочей группой под руководством Министерства внутренних дел Республики Казахстан. Концепция законопроекта предусматривает определение круга лиц, на которых будут распространяться положения Закона; установление уполномоченных органов в сфере противодействия торговле людьми, их прав и обязанностей; определение субъектов противодействия торговле людьми и их компетенции; внедрение оценки рисков торговли людьми и механизма перенаправления жертв и т.п.

Ключевым преимуществом законопроекта является то, что его принятие позволит создать необходимые законодательные правовые основы для повышения эффективности работы в сфере противодействия торговле людьми, а также совершенствования национального законодательства и правоприменительной практики в соответствии с международными стандартами.

В то же время, авторами выделяются ряд рекомендаций по детализации некоторых коллизий, выявленных при анализе представленного на обсуждение проекта Закона. В частности, систематизации и разъяснения требуют принципы правового регулирования, применение превентивных мер, а также оптимизация тезауруса и совершенствование действующего отраслевого законодательства.

Ключевые слова: торговля людьми; законопроект «О противодействии торговле людьми в Республике Казахстан»; права жертв торговли людьми; совершенствование отраслевого законодательства; криминология; кримино-виктимологический аспект.

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Introduction. The legal settlement of the «issue being implemented in national legislation» requires special knowledge in a specific area. This article will focus on the criminal-victimological, both in form and in content, component of the bill being discussed in society (and adopted in the state) in the field of combating human trafficking.

At the same time, the development of the draft Law «On combating human trafficking in the RK» is predetermined by the need to improve sectorial legislation and the practice of its application by taking into account the requirements of international legal standards in

the field of human rights, combating crime and the peculiarities of the national legal system.

The draft law has been developed in accordance with the Decree of the President of the Republic of Kazakhstan (hereinafter – RK) dated April 13, 2022 №871 «On amendments and additions to the Decree of the President of the RK dated June 9, 2021 №597 «On further measures of the RK in the field of human rights»¹, which are instructed to approve the Plan of further measures in the field of human rights and the rule of law, which provides for a number of significant areas of work, including ensuring the rights of victims of human trafficking.

¹ О внесении изменения и дополнения в Указ Президента Республики Казахстан от 9 июня 2021 года №597 «О дальнейших мерах Республики Казахстан в области прав человека»: указ Президента Республики Казахстан от 13 апр. 2022 г. №871 [Электронный ресурс] – Режим доступа: <https://adilet.zan.kz/rus/docs/U2200000871> (дата обращения: 11.02.2023).



To implement the Decree, the Government of the RK approved a Plan of further measures in the field of human rights and the rule of law by Resolution №258 of April 28, 2022², where paragraph 24 requires the development of a draft Law of the RK on combating human trafficking in the RK.

Research methods. The used methods: immersive immersion in the draft law, comparative legal analysis and a systematic approach, formal logical, general scientific and private scientific methods of scientific cognition, formal and dialectical logic.

Discussion. First of all, we note the undoubted criminological bias of the analyzed draft.

Firstly, the high latency of «slavery and human trafficking». Thus, according to the Committee on Legal Statistics and Special Records of the Prosecutor General's Office of the RK for 2022, 14 crimes were registered under Article 128 «Trafficking in persons» of the Criminal Code of the RK, 12 crimes were registered under Article 135 «Trafficking in minors»³. Considering that in general in Kazakhstan, for 2022, about 150 thousand criminal offenses are registered in the URPI, then the latency (of the hidden or concealed part) of this type of offenses is «on the face».

At the same time, from 2019 to 2021, the Ministry of Labor and Social Protection of the Population of the RK, as part of the provision of special social services, provided assistance to 385 victims of human trafficking (2019 – 145, 2020 – 97, 2021 – 143), non-governmental organizations to 461 persons (2019 – 120, 2020 – 141, 2021 – 200) and the International Organization for Migration in the RK 113 victims (2019 – 76, 2020 – 21, 2021 – 16).

Secondly, in order to counter human trafficking

(including latency), openness in understanding the state (criminal) policy of the RK in this area and the availability of a legal mechanism to solve the problem is necessary. Hence the need to «legalize» the draft law.

Regarding international experience, it is a well-known fact that in many countries of the far and near abroad there is a tendency to adopt separate laws to combat human trafficking. This practice is available in developed countries: Australia, Austria, Bahrain, Great Britain, Spain, Canada, the Netherlands, Singapore, the USA, France and others^{4, 5, 6}.

In the CIS, a separate law was adopted in Azerbaijan (28.06.2005), Belarus (07.01.2012), Georgia (28.04.2006), Kyrgyzstan (17.03.2005), Moldova (20.10.2005), Tajikistan (15.07.2004, re-approved 26.07.2014), Turkmenistan (14.12.2007, re-approved 15.10.2016), Ukraine (20.09.2011) and Uzbekistan (17.04.2008, as amended on 17.08.2020)⁷.

Thirdly, the practice-oriented measures to influence human trafficking adopted by General Assembly resolution 55/25 of November 15, 2000⁸ are systematically supported by understandable ways to protect internationally recognized human rights. This document is also known as the Palermo Protocol⁹ (at the place of signing in Palermo, Italy), and has a crimino-victimological nature: it systematized the thesaurus, regulated the issues of criminalization, protection of victims of human trafficking, prevention. Among them:

- prevention or prophylaxy (of human trafficking);
- preclusion (human trafficking);
- fighting (against illegal migration and human trafficking);
- counteraction measures (human trafficking);

² Об утверждении Плана дальнейших мер в области прав человека и верховенства закона: постановление Правительства Республики Казахстан от 28 апр. 2022 г. №258 [Электронный ресурс] – Режим доступа: <https://adilet.zan.kz/rus/docs/P2200000258> (дата обращения: 11.02.2023).

³ Сведения об основных показателях по зарегистрированным уголовным правонарушениям за 2022 год [Электронный ресурс] – Режим доступа: <https://qamqor.gov.kz/crimestat/statistics> (дата обращения: 12.02.2023).

⁴ Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013 [Electronic resource] – Access mode: <https://www.legislation.gov.au/Details/C2013A00006> (Access data: 12.02.2023).

⁵ Combating Human Trafficking [Electronic resource] – Access mode: <https://www.austria.org/human-trafficking> (Access data: 12.02.2023).

⁶ Antislavery in domestic legislation world mapping [Electronic resource] – Access mode: <https://antislaverylaw.ac.uk/map/> (Access data: 12.02.2023).

⁷ The same source.

⁸ Конвенция Организации Объединенных Наций против транснациональной организованной преступности. Принята резолюцией 55/25 Генеральной Ассамблеи от 15 ноября 2000 года [Электронный ресурс] – Режим доступа: https://www.un.org/ru/documents/decl_conv/conventions/orgcrime.shtml (дата обращения: 12.02.2023).

⁹ Протокол о предупреждении и пресечении торговли людьми, особенно женщинами и детьми, и наказании за нее, дополняющий Конвенцию Организации Объединенных Наций против транснациональной организованной преступности: принят резолюцией 55/25 Генеральной Ассамблеи от 15 ноября 2000 г. [Электронный ресурс] – Режим доступа: https://www.un.org/ru/documents/decl_conv/conventions/protocol1.shtml (дата обращения: 12.02.2023).



- concealment, identification and identification of victims (human trafficking, labor, sexual, other exploitation), ensuring the protection of the rights, freedoms and legitimate interests of victims of human trafficking, including women and children, providing assistance to victims of human trafficking and ensuring their safety and privacy;

- victimization, as a condition in which a person (victim) is and may become an object of violence or exploitation;

- identification and elimination of the causes and conditions that contribute to human trafficking.

The Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children, supplementing the Convention against Transnational Organized Crime has primacy over national legislation, since it has been ratified in accordance with the procedure established by the Law of the RK dated June 4, 2008 № 37-IV¹⁰.

Meanwhile, today the RK is a party to more than 60 multilateral universal human rights treaties, including 13 international conventions, treaties and agreements directly related to countering modern forms of slavery, including: the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (ratified by the Law of the RK dated July 4, 2001 №219)¹¹; The UN Convention on Combating Trafficking in Persons and the Exploitation of Prostitution by Third Parties of March 21, 1950 (signed by Presidential Decree №1460 of October 12, 2004, ratified by the Law of the RK №100-III of December 14, 2005)¹²; the UN Convention on Slavery of September 25, 1926 (ratified by the Law of the RK of 5 February 2008, №19-IV); the UN Convention against Transnational Organized Crime of November 15, 2000 (ratified by the Law of the RK of June 4, 2008, №40-IV).

Many provisions of international conventions are implemented in national legislation, however, there is no separate Law «On combating human trafficking».

The results of the study. What shortcomings (omissions, gaps, collisions) have we identified when analyzing the draft law we are looking for, and what needs to be eliminated (clarified, detailed, systematized)?

Regarding the principles of legal regulation. According to the substantive part of the draft law, combating human trafficking is based on the basic principles, with their specific enumeration.

It is known that when the principles are integrated into the text of the law, an internal hierarchy of the norms of the law arises, where the norm-principle is higher than any ordinary norm. This makes it possible to overcome the problem of *lex specialis derogat legi generali*, since norms of higher legal force (even general ones) cannot be disavowed when they are applied by norms with less legal force (even special ones). On the contrary, priority is always given to the higher norm, which takes the principles to a new level and requires the law enforcement officer to always act in their favor.

With this approach, the allocation of sectoral principles into a separate article or chapter of the code ceases to be a purely pedagogical event, acquiring real legal significance [1].

According to part 2 of Article 14-3 «Principles of legislative regulation» of the Law of the RK dated April 6, 2016 «On legal acts»¹³: «2. The principles of legislative regulation should be established with the disclosure of specific mechanisms for their implementation».

In order to fulfill this norm, concretize and eliminate the double interpretation of Article 4 of the draft law «On Combating human trafficking in the RK», it is proposed to clarify the basic principles of combating human trafficking: 1) legality; 2) priority of ensuring and protecting

¹⁰ О ратификации Протокола о предупреждении и пресечении торговли людьми, особенно женщинами и детьми, и наказании за нее, дополняющего Конвенцию Организации Объединенных Наций против транснациональной организованной преступности: закон Республики Казахстан от 4 июня 2008 г. №37-IV [Электронный ресурс] – Режим доступа: https://adilet.zan.kz/rus/docs/Z0800000037_ (дата обращения: 12.02.2023).

¹¹ О ратификации Факультативного протокола к Конвенции о правах ребенка, касающегося торговли детьми, детской проституции и детской порнографии: закон Республики Казахстан от 4 июля 2001 г. №219 [Электронный ресурс] – Режим доступа: https://adilet.zan.kz/rus/docs/Z010000219_ (дата обращения: 11.02.2023).

¹² О подписании Конвенции о борьбе с торговлей людьми и с эксплуатацией проституции третьими лицами и Заключительного протокола: указ Президента Республики Казахстан от 12 окт. 2004 г. №1460 [Электронный ресурс] – Режим доступа: https://adilet.zan.kz/rus/docs/U040001460_ (дата обращения: 11.02.2023).

¹³ О правовых актах: закон Республики Казахстан от 6 апр. 2016 г. №480-V ЗРК [Электронный ресурс] – Режим доступа: <https://adilet.zan.kz/rus/docs/Z1600000480> (дата обращения: 11.02.2023).



the rights, freedoms and legitimate interests of a person and citizen; 3) publicity; 4) priority of preventive measures; 5) complexity, consistency, continuity of countering human trafficking through the joint efforts of all subjects of combating human trafficking; 6) certainty, consistency and validity; 7) the inevitability of punishment for crimes related to human trafficking; 8) the inadmissibility of discrimination against victims of human trafficking, ensuring their safety and assistance to them; 9) ensuring an approach focused on the rights of victims of human trafficking, including the needs, well-being and safety in providing them assistance in accordance with the standard established by the legislation of the RK and during the criminal process; 10) the inadmissibility of expelling foreigners and stateless persons identified and identified as victims of human trafficking in the territory of the RK; 11) ensuring a gender-sensitive approach in the implementation of programs to combat human trafficking; 12) ensuring the confidentiality of information related to victims of human trafficking by all subjects of combating human trafficking; 13) ensuring the confidentiality of information about the child's identity and information that allows the child to establish the status of a victim of human trafficking; 14) respect for the opinion of minor victims of trafficking in persons, regarding the measures that are applied to him, taking into account his age, state of health, intellectual and physical development and interests; 15) explaining to the minor victim of human trafficking, in a form understandable to her, her rights and obligations¹⁴.

In order to minimize the backlash of misinterpretation of norms-principles, which is described in detail in the special literature [2]; [3], it is recommended to make accuracy in understanding and applying the principles of legislative regulation of combating human trafficking.

An additional argument for clarifying the content of the principles of combating trafficking in human beings is the goal of minimizing and eliminating possible contradictions to the

principles of criminal procedure law (Articles 9-31 of the CPC of the RK)¹⁵.

At the same time, we note that the correctness of recognition among the principles of combating human trafficking is questionable:

- certainty, consistency, consistency and validity (p. 6);
- ensuring an approach focused on the rights of victims of human trafficking, including the needs, well-being and safety in providing them with assistance in accordance with the standard established by the legislation of the RK and during criminal proceedings (p. 9);
- inadmissibility of expulsion from the RK of foreigners and stateless persons identified and identified as victims of human trafficking in the territory of the RK (p. 10);
- ensuring a gender-sensitive approach in the implementation of anti-trafficking programs (p. 11);
- ensuring the confidentiality of information related to victims of human trafficking by all subjects of combating human trafficking (p. 12).

These paragraphs do not relate to the principles, and therefore should be recorded as separate provisions of the draft law.

Regarding the optimization of the thesaurus.

1) It was noted earlier that the Palermo Protocol has primacy over national legislation. Consequently, the terminology of «human trafficking» requires its unification.

The draft law defines human trafficking as the purchase and sale or commission of other transactions with respect to a person, as well as his exploitation or recruitment, transportation, transfer, concealment, receipt, as well as the commission of other acts for the purpose of exploitation.

In the Palermo Protocol, «human trafficking» means the recruitment, transportation, transfer, concealment or receipt of persons for the purpose of exploitation by the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or vulnerability of position, or by bribery, in the form of payments or benefits, to obtain the consent of a person, controlling another person. Exploitation includes,

¹⁴ О противодействии торговле людьми в Республике Казахстан: проект Закона Республики Казахстан [Электронный ресурс] – Режим доступа: <https://legalacts.egov.kz/npa/view?id=14321238> (дата обращения: 11.02.2023).

¹⁵ Уголовно-процессуальный кодекс Республики Казахстан: от 4 июля 2014 г. №231-V ЗРК [Электронный ресурс] – Режим доступа: <https://adilet.zan.kz/rus/docs/K1400000231> (дата обращения: 11.02.2023).



at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

That is, the definition of human trafficking proposed both in the draft law and in part 1 of Article 128 of the Criminal Code of the RK does not contain references to the methods of its commission (means of influence), which are an obligatory element of the crime of trafficking in [adults] in accordance with Article 3 of the Palermo Protocol. This approach contradicts Kazakhstan's international obligations, which has been repeatedly noted by international observers^{16, 17, 18}.

Among other things, such a «stripped-down» construction of the corpus delicti of trafficking in persons (act and purpose) in part 1 of Article 128 of the Criminal Code of the RK may in practice have a kind of «deterrent effect» on the law enforcement officer (investigators, prosecutors, judges), who may not see a real public danger of an act not accompanied by means of influencing the will and the consciousness of the [adult] victim.

Moreover, article 128 of the Criminal Code of the RK does not establish a link between the methods of committing a crime and the victim's consent to the alleged exploitation, as provided for in subparagraph (b) of Article 3 of the Palermo Protocol. In such a situation, law enforcement officers may prefer to qualify human trafficking as related crimes, for example, involvement in prostitution (Article 308 of the Criminal Code of the RK), violation of labor legislation (Article 152 of the Criminal Code of the RK), etc., more familiar to them from past practice, rather than trying to apply the construction of the crime of human trafficking in its current form.

2) There is also a need to check the glossary

¹⁶ Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian – Addendum – Mission to Kazakhstan [Electronic resource] – Access mode: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/24/43/Add.1 (Access data: 12.02.2023).

¹⁷ Доклад по торговле людьми в Казахстане за 2020 год // Посольство и консульство США в Казахстане [Электронный ресурс] – Режим доступа: <https://kz.usembassy.gov/ru/tip-report-kazakhstan-2020/> (дата обращения: 12.02.2023).

¹⁸ Отчет об оценке эффективности мер по выявлению (потенциальных) жертв торговли людьми и уголовному преследованию преступлений, связанных с торговлей людьми, в Республике Казахстан // Конференция: Национальный диалог для усиления уголовного преследования за торговлю людьми и улучшения идентификации жертв торговли людьми в Казахстане – 28 мая 2021, Нур-Султан [Электронный ресурс] – Режим доступа: <https://zoom.us/j/98191974136?pwd=TkRWS0MwbXl0Q0FzZzFoT0RBYlprKzZ09> (дата обращения: 28.05.2021).

¹⁹ О специальных социальных услугах: закон Республики Казахстан от 29 дек. 2008 г. №114-IV [Электронный ресурс] – Режим доступа: https://adilet.zan.kz/rus/docs/Z080000114_ (дата обращения: 11.02.2023).

²⁰ Об утверждении стандарта оказания специальных социальных услуг жертвам торговли людьми: приказ и.о. Министра здравоохранения и социального развития Республики Казахстан от 24 фев. 2016 г. №138 [Электронный ресурс] – Режим доступа: <https://adilet.zan.kz/rus/docs/V1600013543> (дата обращения: 11.02.2023).

proposed by the developers of the draft for the prevalence in the current NLA and the identity of the content part. In particular, the terms proposed in paragraphs 1) and 5) of Article 1 of the draft law:

- a victim of human trafficking is an individual identified as a victim of human trafficking, regardless of the fact of a pre-trial investigation on this matter, as well as a person recognized in accordance with the criminal procedure legislation of the RK as a victim of crimes related to human trafficking;

- identification of a victim of human trafficking – the procedure established by the legislation of the RK for recognizing a person as a victim of human trafficking.

By the Law of the RK dated December 29, 2008 №114-IV «On special social services»¹⁹ these terms are used. Thus, in accordance with subparagraph 2) of Article 8 of the Law of the RK «On special social services», the standard for providing special social services to victims of human trafficking has been approved.

This Standard²⁰ uses the following terms and definitions:

- a victim of human trafficking is an individual in respect of whom there are grounds to believe that he has directly suffered from an offense related to human trafficking, regardless of the fact that criminal proceedings have been initiated regarding the actions committed;

- identification of the victim of human trafficking – attribution of a person to victims of ill-treatment that led to social maladaptation and social deprivation as a result of actions related to trafficking in persons, including minors, other types of their exploitation, as well as kidnapping, according to the Criteria for assessing the presence of ill-treatment that led to social maladaptation and social deprivation, approved



by a joint order of the Minister of Internal Affairs of the RK dated September 22, 2014 №630, the Minister of Education and Science of the RK dated September 26, 2014 №399 and the Minister of Health and Social Development of the RK dated November 19, 2014 №240.

As we can see, the terms proposed by the developers of the draft law are not legally and semantically identical to the definitions applied by the Law of the RK «On Special Social Services». Therefore, for the sake of uniformity in the thesaurus, after the adoption of the relevant law, they require unification.

Regarding preventive measures and improvement of the current industry legislation.

On October 22, 2020, speaking at the fourth meeting of the National Council of Public Trust under the President of the RK, the Head of State indicated the adoption of concrete measures to improve the effectiveness of prevention and detection of criminal offenses related to human trafficking, assistance to all persons, including foreign citizens who have become victims of human trafficking and forced labor²¹.

In this regard, recognizing and realizing the crimino-victimological component of the draft law, in our opinion, it would be conceptually necessary to swap chapters 2-6 (Articles 6-15) with chapters 4-7 (Articles 16-28), and to put the victim-the victim of human trafficking, prevention measures, protection of the rights of victims of trafficking, in the foreground and then the regulation of the competence of the Central state bodies and authorized bodies.

Taking into account the legal situation with the rights of vulnerable migrant workers and victims of human trafficking in Kazakhstan, the analysis of the level of their social and legal protection, it is necessary to give priority to human-centricity (priority of the victim) in the draft law.

It should also be recognized that the draft law does not pay enough attention to measures to prevent human trafficking. Chapter 4 of the draft law under consideration consists of only two articles. In this regard, in our opinion, a special study is required.

Thirdly, taking into account the identified gap in national legislation and law enforcement practice regarding the prevention of trafficking in persons, the rights and obligations of victims of trafficking in persons, including minors, and in order to further systematize the current legislation, it is necessary to make an addition to the Decree of the Government of the RK dated April 11, 2019 №190 «On classification of branches of legislation of the RK»²² in parts of the designation of a new branch of legislation and provision of the rule-making process.

Currently, combating human trafficking is located at the junction of two sciences that are not reflected in the classifier of branches of legislation in any way: criminology and victimology. For example, 180.003.001. State protection of victims of criminal proceedings.

Although, by and large, taking into account the accumulated scientific and empirical knowledge, criminology should be reflected in the «classifier» separately, as «legislation on crime prevention».

Criminology is («the science of crime», from the Latin *crimen* – crime, *λόγος* – teaching) a socio-legal science that studies crime, the identity of the criminal, the causes and conditions of crime, ways and means of preventing it [4].

The general criminological theory includes the theory of crime and the theory of countering crime.

Private criminology studies certain types of crime: mercenary crime, violent crime, political crime, and types of mass criminal behavior: organized criminal activity, corruption, environmental crimes, reckless crimes, crimes of minors and against minors, etc.

Criminological branches investigate the criminality of the main social subsystems (institutions) and (or) countering crime by means of these social subsystems (institutions) – family criminology, economic criminology, political criminology, religious criminology, criminology of law, criminopenology, criminology of the media, environmental criminology [5].

In particular, in the current legislation of

²¹ Президент Касым-Жомарт Токаев принял участие в четвертом заседании Национального совета общественного доверия // Официальный сайт Президента Республики Казахстан [Электронный ресурс] – Режим доступа: https://www.akorda.kz/ru/events/akorda_news/meetings_and_sittings/prezident-kasym-zhomart-tokayev-prinyal-uchastie-v-chetvertom-zasedanii-natsionalnogo-soveta-obshchestvennogo-doveriya (дата обращения: 12.02.2023).

²² О классификации отраслей законодательства Республики Казахстан: постановление Правительства Республики Казахстан от 11 апр. 2019 г. №190 [Электронный ресурс] – Режим доступа: <https://adilet.zan.kz/rus/docs/P1900000190> (дата обращения: 12.02.2023).



Kazakhstan there is such a NLA:

- The Law of the RK dated December 4, 2009 «On the prevention of domestic violence»²³;
- the Law of the RK dated April 29, 2010 «On the prevention of offenses»²⁴.

The criminological term «prevention» (as a synonym for the term «prevention») is widely used in anti-corruption legislation.

An additional argument for replenishing the «classifier» as «legislation on crime prevention» is that, apart from the scientific legal and scientific anti-corruption expertise of NLA projects, the scientific criminological expertise of NLA. Criminological expertise is a special study of draft regulatory legal acts conducted to assess their possible impact on the state of the criminogenic situation.

Thus, it is recommended to eliminate the gap in the classifier of branches of legislation. And in connection with the development and subsequent adoption of the draft law «On

combating human trafficking in the RK», the relevance and necessity of supplementing the «classifier» is beyond doubt.

Conclusion. The problems raised in this content study regarding the concretization and elimination of the double interpretation of Article 4 of the draft law «On combating trafficking in persons in the RK» in order to clarify the basic principles of combating trafficking in persons, updating the glossary proposed by the developer of the draft law on the prevalence in the current NLAs and the identity of the content part, and the undoubted fact that criminology should be reflected in the «classifier» separately, how «legislation on crime prevention» is reflected and justified in this work.

The proposed legislative amendments, taking into account foreign experience and law enforcement practice, will undoubtedly improve the current law of Kazakhstan in the stated issues of combating human trafficking.

List of used literature:

1. Головкин, Л.В. Закрепление отраслевых принципов в кодифицированных актах: педагогический прием или правовой инструмент? / Л.В. Головкин // Закон. – 2020. – №6. – С. 29-30.
2. Абдрасулов, Е.Б. Применение методов толкования и аналогии права в деятельности суда и органа конституционного контроля в Республике Казахстан / Е.Б. Абдрасулов, А.Е. Абдрасулова // Вестник Санкт-Петербургского университета / Право. – 2020. – Т. 11, №2. – С. 447-463.
3. Елюбаев, Ж.С. Правильное толкование законодательных установлений и контрактных положений – как способ формирования единообразной правоприменительной практики [Электронный ресурс] – Режим доступа: https://online.zakon.kz/Document/?doc_id=31101093 (дата обращения: 11.02.2023).
4. Каиржанов, Е. Криминология (общая часть) / Е. Каиржанов. – Алматы, 1997. – 192 с.
5. Криминология: учебник; под ред. проф. А.И. Долговой. – М., 1997. – 784 с.

References:

1. Golovko, L.V. Zakreplenie otraslevykh principov v kodifitsirovannykh aktakh: pedagogicheskij priem ili pravovoj instrument? / L.V. Golovko // Zakon. – 2020. – №6. – S. 29-30.
2. Abdrasulov, E.B. Primenenie metodov tolkovaniya i analogii prava v dejatel'nosti suda i organa konstitucionnogo kontrolja v Respublike Kazahstan / E.B. Abdrasulov, A.E. Abdrasulova // Vestnik Sankt-Peterburgskogo universiteta / Pravo. – 2020. – T. 11, №2. – S. 447-463.
3. Eljubaev, Zh.S. Pravil'noe tolkovanie zakonodatel'nyh ustanovlenij i kontraktnyh polozhenij – kak sposob formirovaniya edinoobraznoj pravoprimeritel'noj praktiki [Jelektronnyj resurs] – Rezhim dostupa: https://online.zakon.kz/Document/?doc_id=31101093 (data obrashhenie: 11.02.2023).
4. Kairzhanov, E. Kriminologija (obshhaja chast') / E. Kairzhanov. – Almaty, 1997. – 192 s.
5. Kriminologija: uchebnik; pod red. prof. A.I. Dolgovoj. – M., 1997. – 784 s.

²³ О профилактике бытового насилия: закон Республики Казахстан от 4 дек. 2009 г. №214-IV [Электронный ресурс] – Режим доступа: https://adilet.zan.kz/rus/docs/Z090000214_ (дата обращения: 12.02.2023).

²⁴ О профилактике правонарушений: закон Республики Казахстан от 29 апр. 2010 г. №271-IV [Электронный ресурс] – Режим доступа: https://adilet.zan.kz/rus/docs/Z100000271_ (дата обращения: 12.02.2023).



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