THIRD STUDY COMMISSION QUESTIONNAIRE 2010
THE UNION OF JUDGES OF THE REPUBLIC OF KAZAKHSTAN,
KAZAKHSTAN

HUMAN TRAFFICKING

Question 1: Has your country signed and ratified the Palermo Protocol? If yes, on what date?


The Republic of Kazakhstan has ratified a number of other international documents on prevention of trafficking in people:


5. Agreement on Cooperation of General Prosecutor’s Offices of the Countries – Members of the CIS against Trafficking in Persons, Human Organs and Tissues. Draft Agreement is approved by the General Prosecutor’s Decree of November 23, 2009 No.69.

Question 2: Does your country have special legislation for the criminal prosecution of human trafficking? If yes, please answer Questions 3 to 10. If no, is there any such legislation presently under consideration?


Question 3: How is human trafficking defined in your country’s legislation?

There is no any term defining a human trafficker in the Criminal Code of the Republic of Kazakhstan.
According to the Criminal Code of the Republic of Kazakhstan, a human trafficker in corresponding articles of the mentioned code is defined as a person having committed an offence against person, family and children, against public health and morals.

**Question 4: Does the legislation criminalize:**

a) Attempts to commit a trafficking offence?

b) Participation as an accomplice or party in a trafficking offence?

c) Organizing or directing others to commit a trafficking offence?

Preparation of crime, attempt to commit crime are criminalized by legislation. Participation as accomplice or party in an offence, creating an organized criminal group is criminally punishable.

**Question 5: Can corporations be charged with human trafficking along with natural persons (ie. employment agencies, travel agencies, escort services)?**

According to Article 14 of the Criminal Code of the Republic of Kazakhstan criminally liable are sane natural persons of the age set by the Criminal Code of the Republic of Kazakhstan.


**Question 6: Does the legislation contain special provisions regarding the trafficking in children? If yes, please describe.**

Article 133. Trafficking in Children

1. Sales or other transactions with respect to a child as well as his/her exploitation or recruitment, transportation, transfer, harbouring and other acts for the purpose of exploitation are punished by imprisonment for a period from five to seven years with or without seizure of property.

2. The same acts committed:
   a) by a group of people by previous concert;
   b) repeatedly;
   c) with the use of violence dangerous for life and health or threat of violence;
   d) with the use of weapons or items applied as weapon;
   e) against two or more people;
   f) for the purpose of removal of organs or tissues of the victim for transplantation or other use;
   g) by fraud or abuse of trust;
   h) by a person using his/her official position;
   i) for the purpose of involvement of a child in commitment of crimes or other antisocial actions;
   j) with the use of material or other dependence of a victim

are punished by imprisonment for a period from seven to ten years with or without seizure of property.

3. Actions envisaged by parts one or two of this Article committed for the purpose of taking a child away from Kazakhstan, bringing him/her to Kazakhstan or transportation of a child through Kazakhstan from one country to another as well as taking a child away from Kazakhstan, bringing him/her to Kazakhstan or transportation of a child through Kazakhstan from one country to another for the purpose of committing such actions are punished by
imprisonment for a period from ten to twelve years with or without seizure of property.

4. Actions envisaged by parts one, two or three of this Article if they:
   a) are committed by an organized group;
   b) result by inadvertence in the death of victim or any grave circumstances
   are punished by imprisonment for a period from twelve to fifteen years with seizure of property.

**Question 7: What are the penalties for human trafficking offences? Do they include deportation/extradition? Do they include confiscation of instruments of trafficking and proceeds of trafficking?**

Article 128. Human Trafficking

1. Sales or other transactions with respect to a person as well as his/her exploitation or recruitment, transportation, transfer, harbouring and other acts for the purpose of exploitation are punished by imprisonment for a period up to five years with or without seizure of property.

2. The same acts committed:
   a) by a group of people by previous concert;
   b) repeatedly;
   c) with the use of violence dangerous for life and health or threat of violence;
   d) with the use of weapons or items applied as weapon;
   e) against a woman being pregnant with a guilty person knowing about this fact;
   f) against two or more people;
   g) for the purpose of removal of organs or tissues of the victim for transplantation or other use;
   h) by fraud or abuse of trust;
   i) by a person using his/her official position;
   j) with the use of material or other dependence of a victim
   are punished by imprisonment for a period from five to seven years with or without seizure of property.

3. Actions envisaged by parts one or two of this Article committed for the purpose of taking a person away from Kazakhstan, bringing him/her to Kazakhstan or transportation of a person through Kazakhstan from one country to another as well as taking a person away from Kazakhstan, bringing him/her to Kazakhstan or transportation of a person through Kazakhstan from one country to another for the purpose of committing such actions are punished by imprisonment for a period from seven to ten years with or without seizure of property.

4. Actions envisaged by parts one, two or three of this Article if they:
   a) are committed by an organized group;
   b) result by inadvertence in the death of victim or any other grave circumstances
   are punished by imprisonment for a period from seven to fifteen years with seizure of property.

**Question 8: Are there statistics available on the number of prosecutions and rates of conviction in your country for human trafficking offences since its anti-trafficking legislation was adopted? If yes, please provide.**

Yes, statistics is given in the table below:

<table>
<thead>
<tr>
<th>RoK Criminal Code Articles</th>
<th>Year 2004</th>
<th>Year 2005</th>
<th>Year 2006</th>
<th>Year 2007</th>
<th>Year 2008</th>
<th>Year 2009</th>
<th>Year 2010</th>
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Question 9: To what extent does your country permit (through legislation or protocols) the pursuit of anti-trafficking investigations in cooperation with foreign intelligence or police services?

Kishinev Agreement, Minsk Bilateral Protocol

Question 10: Are there provisions protecting trafficked persons from being prosecuted or punished for their illegal entry or residence in your country as a result of having been the victims of human trafficking? Are there provisions preventing their deportation where there are grounds to believe that their return to their country of origin presents a significant security risk to them or their family members?

Yes, there are in the framework of international treaties on refugees.

Vladimir Borisov