

УДК 343.431

Р. О. Zhyrova,

Bachelor (master's degree) National university «odesa maritime academy»

## INTERNATIONAL STANDARDS OF PREVENTION OF TRAFFICKING IN PERSONS

*The article examines the international standards and of the prevention of human trafficking. The doctrinal studies of scientists, as well as scientific literature on this topic are considered. The problem of implementation of international standards concerning the prevention of human trafficking in Ukraine is determined. The ways of improving the implementation of international standards for the prevention of human trafficking in Ukraine are proposed.*

**Key words:** international standards, state of implementation, prevention, human trafficking.

Today human trafficking is a major problem for the whole world. The evidence of the international community's concern about the current situation is a number of conventions, pacts, and protocols on the settlement of this issue. We notice that the issue of human traffic is changing, which leads to the difficulties in identifying the victims and providing the assistance to them, conducting preventive maintenance, as well as effective investigating of such cases. Measures to combat human traffic should be based on the current national legislation adopted on the basis of generally accepted international rules. Therefore, I believe that currently, it is necessary to investigate the state of implementation of international standards.

**Issues analysis.** Separate issues concerning the prevention of human traffic were under the study of such prominent scientists as M. I. Andriienko, N. M. Akhtyrskaya, A. F. Voznyi, V. I. Varyvoda, V. I. Vasylynychuk, T. I. Vozna, A. I. Volkova, O. M. Dzhuzha, V. F. Deriuzhynskyi, V. O. Ivaschenko, K. B. Levchenko, K. I. Levchenko, V. V. Maksymov, Yu. S. Nahachevska, D. Y. Nykyforchuk and others. At the same time it should be noted that in spite of a large number of scientific investigations on the prevention of human traffic in Ukraine, insufficient attention is paid today exactly to the study of the state of implementation of international standards on the prevention of human traffic in Ukraine.

**The aim** of the article is the investigation of international standards concerning prevention of human traffic in Ukraine.

**The statement of basic materials.** First of all, it should be noted that at present, the main international organizations involved in the development and implementation of international standards on the prevention of human traffic are the United Nations, European Union, Council of Europe, Organization of Security and Cooperation in Europe (OSCE), international intergovernmental and non-governmental organizations, for example, Women's International League For Peace and Freedom, Women's International Democratic Federation, The Global Survival Network, The Foundation Against Trafficking and many others [1].

Thus, for example, the United Nations Palermo Convention and the Protocol to it, adopted in November 2000, stipulate that trafficking in person is one of the most dangerous criminally punishable acts [2]. In turn, the Convention for the Suppression of the Traffic in Person and of the Exploitation of the Prostitution of Others, adopted by the General Assembly of the United Nations on 02.12.1949, consolidates the provisions of other international treaties on this issue since 1904. Its main task is to identify effective measures to combat all forms of trafficking in women and exploitation of prostitution. For the first time in the

history of treaty-making, this Convention proclaimed prostitution and trafficking in person as acts, incompatible with the dignity and worth of the human person, endangering the well-being of individuals, families, and society. [3]. The International Covenant on Civil and Political Rights, adopted in 1966 in New-York, is a supplement to the Universal Declaration of Human Rights, in particular it protects the right to life and states that no person should be subjected to trials, forced labor, and detainer or oppression of such freedoms as freedom of movement, expression and association with others. [4].

It is important to consider the Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women, adopted in 1997. Its goal is to support the further actions to prevent trafficking in person, as well as to provide necessary assistance to the victims of trafficking. Considering the Council Joint Action document of 1997, it should be noted that it lists additional penalties and administrative measures such as confiscation and seizure of income and property of trafficker and closure of institutions involved in trafficking in person. It obligates the EU Member States to impose administrative or criminal responsibility for the crimes committed on behalf of an incorporate person without taking into account the criminal liability of a natural person who became accomplice or initiator of a crime. [5].

The United Nations Convention against Transnational Organized Crime, New York, 15.11.2000, aims at promotion of international cooperation for prevention and combating transnational organized crime. It provides law enforcement and judicial authorities with unique means to combat this problem. [2]. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children is a supplement to the above-mentioned Convention. For the first time, the international definition of «trafficking in human beings» is given; it serves to prevent, combat and consolidate international cooperation in the fight

against this crime; defines the general terminology, harmonizes the laws and practices that are applied in different countries. According to the Protocol, trafficking in person is an action complex of recruiting, transporting, transferring and receiving persons using threats of use of force, other forms of coercion, intimidation, or by providing false information about the possibility of obtaining (earning) money in a destination. An indispensable attribute of trafficking in person is obtaining control over a person (for example, through seizure of documents) for the purpose of exploitation [7].

We note that this is not an exhaustive list of international normative legal acts, which implement legal regulation and establish international standards for the prevention of trafficking in person in the world. It should be noted that the majority of international norms implementing the legal regulation for the prevention of trafficking in person are part of the national legislation of Ukraine. This is a great step for our country in setting international standards against trafficking in human beings.

Today, the Council of Europe Framework Decision on Trafficking in Human Beings acts at the EU level. Its aim is to unify the national criminal law to ensure effective fight against trafficking in human beings. It complements the instruments already adopted by the Council of Europe, such as the Joint Actions of 1996, 1998 and 2000, as well as the STOP program (focusing mainly on developing an interdisciplinary approach involving all concern parties and highlighting the essential role of non-governmental organizations) and DAPHNE (specially developed to support the activities of non-governmental organizations in the field of protection of women and children victims of violence [6].

I also consider it necessary to analyze, in the framework of this study, the experience of the Federal Republic of Germany in preventing trafficking in human beings. It is interesting for us the

presence of a nationwide Working Group on combating trafficking in women (created in 1997 to combat women trafficking more successfully by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth), which involves representatives of various federal and Land Ministries, the Federal Criminal Police Service, as well as other concerned entities. Tasks of the Working Group include: exchange of information on measures to combat trafficking in women; analysis of problems that may arise in the implementation of measures to combat trafficking in women; working out joint proposals and action plans; preparation of statements on behalf of Germany in the context of international events [8].

Currently, there are four standard databases in Germany that contain information on human trafficking facts: crime statistics, where police intelligence data is being reported; reports on the situation connected with the existence of the phenomenon of trafficking in human beings drawn up by the German Federal Office of Criminal Investigation; statistics on cases transferred to the court; Central Crime Register, containing information on proceedings. One should also agree with O.V Kushnir, who states that the implementation of such a clear fixation of all information in the field of combating human trafficking allows not only to quickly find the necessary information but also to eliminate a lot of unnecessary actions carried out by law enforcement officers of our state in the search of criminal cases, persons involved in the commission of such crimes, as well as consideration of this category of cases in the courts. In addition, the situation regarding the consideration of criminal cases in the courts and the number of persons brought to justice clearly are outlined (for Ukraine, the creation of such databases is absolutely necessary, since many cases in court have been «dusty» for years, their consideration is delayed, and sentences do not correspond to the real extent of the crime and the consequences of the crime, and it is very difficult to

track the real situation, since some workers change for the other, the data is lost and as a result there is a «delay in receiving» and «mixing» of the information). In addition, the existence of such databases greatly simplifies the process of finding and fixing real evidence, and in general, raises the level of anti-trafficking capabilities [8].

The German government has opposed the trafficking of human beings by mobilizing the efforts of law enforcement agencies. The German legislation prohibits the trafficking of human beings in any form; trafficking in human beings for the purpose of sexual exploitation and forced labor is a crime. The punishment for such crimes involves up to 10 years of imprisonment. At the same time, the German government pays a lot of attention and preventive work, including the financing of activities of a whole range of non-governmental organizations conducting information and education campaigns on the prevention of trafficking in human beings both in Germany and abroad [8].

With regard to the implementation of international standards for the prevention of trafficking in human beings in Ukraine, it should be noted that our state is a participant of international acts on cooperation and prevention of trafficking in human beings. According to O. Yemets, the criminalization of trafficking in human beings in Ukraine took place in 1998, and with the adoption of the new Criminal Code in 2001, responsibility for such actions is stipulated in Art. 149. However, this article had significant disadvantages, in particular, its disposition provided for mandatory transfer across the state border of the injured person. In 2006 a new edition of this article was adopted, which more closely corresponded to the realities of the present. The disposition of the article provides for criminal liability for trafficking in human beings or for the commission of another illegal transaction, the object of which is a person, as well as the recruitment, transportation, hiding, transfer or receipt of a person committed

for exploitation, using deception, extortion or a vulnerable state of a person. Despite the positive changes, in this form, the article has certain disadvantages as well. The evolution of the wording of the legal norms proves the desire to improve it and confirms its intention to comply with the obligations to implement the provisions of international acts in the national legislation. The criticism of this revised version of the article does not stop; in particular, it indicates that the new article was not perfect in terms of legal technology, which would give rise to some problems in its application. There is a need for an extended interpretation of concepts such as «recruitment», «transportation», «extortion», «vulnerable person», «hiding», «transfer or reception of a person» for the sole purpose of their unified interpretation and application by law enforcement agencies. Explanation of such concepts with their delineation can be given in the note to the article, and in the absence of such — in the resolutions of the plenum of the Supreme Court of Ukraine [9, p. 186- 187].

In addition, Ukraine's adoption in September 2011 of the Law «On Trafficking in Persons» significantly brought Ukraine's legislation closer to the best international standards in this area. Consequently, Ukrainian legislation as a whole complies with the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings (Article 149 of the Criminal Code of Ukraine, the Law of Ukraine on Combating Trafficking in Human Beings). Ukraine has provided sufficient and adequate severe penalties for human trafficking and related crimes. The Law «On the Trafficking in Persons» contains a number of innovative provisions concerning the protection of victims of trafficking in human beings. For example, in order to provide effective assistance to people who have suffered from trafficking in human beings and their protection, a National mechanism for interaction between performers involved in combating trafficking in person is being created [10]. The Law of Ukraine «On Combating

Trafficking in Human Beings» states that the fight against trafficking in human beings is a system of measures implemented in the framework of combating trafficking, aimed at detecting the crime of trafficking, including unfinished one, the victims of it, establishing of identity of physical/legal persons — traffickers and bringing them to justice [11].

In particular, according to the Ukrainian Helsinki Human Rights Union Study on the main organizational and legal problems, the violations of the rights of people suffering from trafficking in human beings are as follows: 1) article 17 of the Law «On the Trafficking in Persons» stipulates that, in order to ensure the realization of the rights provided by the Law, persons who have suffered from trafficking may be referred to one of the centers of social services for the family, children and youth, social service centers (provision of social services) or to social and psychological rehabilitation centers for children and children's shelters, in the case if a victim is juvenile [11]. However, in accordance with the provisions of these institutions, developed on the basis of the Resolution of the Cabinet of Ministers of Ukraine on January 28, 2004 №. 87 [12], as well as the Decree of the Cabinet of Ministers of Ukraine on December 29, 2009 №. 1417 [13], the category of persons suffered from trafficking in human beings is not included in the list of persons entitled to receive services in these institutions. In addition, there are difficulties in identifying trafficked persons among the total number of clients (those who are in difficult circumstances) of these institutions. There remains a problem of providing assistance to victims from other countries, ensuring their needs for protection and assistance during their stay in Ukraine. 2) The lack in the Law and the relevant by-laws of provision for the establishment of a period of rehabilitation and reflection for persons, who have the grounds for believing, that they have suffered from human trafficking, also violates the rights of the victims, especially citizens of other countries. It is

considered appropriate to integrate these provisions into the key international documents, in national regulatory acts, taking into account the existing experience of other countries, where the period of rehabilitation and reflection is already a standard; 3) despite the fact that in the Law of Ukraine «On Combating Trafficking in Human Beings» there are provisions regarding the need to assess the risks of returning the victim to the country of origin (Article 16 «Rights of the Victim of Trafficking in Human Beings» and Article 24 «Return or Retention of the Child Victim of Trafficking» ), regulatory documents that were adopted to comply with the law do not contain a clear procedure for assessing such risks. Also, this procedure is not included to the provisions, which guide the individuals engaged in countering trafficking in human beings; 4) there are also difficulties and violations during the process of compensation for the property, moral and physical harm the victims suffered as a result of the crime of trafficking in human beings. Among them there is the formal approach of investigators to explain to victims their rights to sue for compensation; the need to prove the fact of moral suffering; the remoteness of expert centers and a small number of certified expert psychologists; lack of practice of international cooperation in protecting property rights of Ukrainian citizens; imperfect legislative mechanism for recovery of compen-

sation; ineffectiveness of Art. 1177 of the Civil Code of Ukraine regarding state obligations to compensate for a damage to victims; 5) standards for the provision of services in the field of counteraction trafficking in human beings have not yet been adopted; they were developed and submitted to the Ministry of Social Policy by a group of experts — representatives of state, non-governmental and international organizations in 2010 [14].

**Conclusion.** Consequently, based on the investigation conducted, it should be noted that today there is a need for regulatory action to ensure the practical implementation of international standards concerning human traffic prevention in the country. It is urgent to create effective mechanisms of state administration of migration processes, which would facilitate the introduction of effective measures to combat illegal migrations and human traffic. An important part of this process is the use of European experience in state administration to counteract illegal migration and human traffic in particular. I believe that it is necessary to analyze the experience, actively used in Federal Republic of Germany, and create a working group on combating human traffic, as well as to carry out a number of informational organizational measures on establishment of a proper database, which would contain the information on human traffic, on the example of Germany and other countries.

**Жирова П. О. Міжнародні стандарти запобігання торгівлі людьми.**

*У статті досліджується міжнародні стандарти щодо запобігання торгівлі людьми. Розглядаються доктринальні дослідження вчених, а також наукова література стосовно даної теми. Визначається проблематика виконання міжнародних стандартів щодо запобігання торгівлі людьми в Україні. Запропоновано шляхи покращення реалізації міжнародних стандартів запобігання торгівлі людьми в Україні.*

**Ключові слова:** міжнародні стандарти, стан реалізації, запобігання, торгівля людьми.

**Жирова П. А. Международные стандарты предотвращения торговли людьми.**

*В статье исследуются международные стандарты относительно предотвращения торговли людьми. Рассматриваются доктринальные исследования ученых, а также научная литература касательно данной темы. Определяется проблематика выполнения международных стандартов относительно предотвращения торговли людьми в Украине. Предложены пути улучшения выполнения международных стандартов предотвращения торговли людьми в Украине.*

**Ключевые слова:** международные стандарты, состояние реализации, предотвращение, торговля людьми.