

Comparative Study on The Features of Fighting Against Organ Trafficking: Review of Azerbaijan and North Macedonian Legislation on Combating Human Trafficking

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Abstract

The growing problem of organ trafficking as one of the components of human trafficking does not lose its relevance to the globalizing world, especially to the developing countries. Being part of the global community, and at the same time being developing countries Azerbaijan and North Macedonia face the problem of human trafficking. This article is a review study of comparative character. The purpose of this study is to reveal the features of the fight against organ trafficking, to disclosure the facts of this crime in Azerbaijan and North Macedonia, as well as analysis of the legislation of both countries. In this study has been used the literature search method. Data has collected by entering the key words on the search engine. According to the findings of this study Azerbaijan and North Macedonia are the source, transit and distant countries of human trafficking. However due to the poor official information there are lack of evidences on organ trafficking in these countries.

Keywords: *organ trafficking, human trafficking, organ trafficking in Azerbaijan, organ trafficking in North Macedonia, organ transplantation.*

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Organ Kaçakçılığına Karşı Mücadelenin Özellikleri Üzerine Karşılaştırmalı Bir Çalışma: İnsan Ticareti ile Mücadelede Azerbaycan ve Kuzey Makedonya Mevzuatının Gözden Geçirilmesi

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Öz

İnsan ticareti bileşenlerinden biri olarak organ ticareti sorunu, küreselleşen dünyada, özellikle de gelişmekte olan ülkelerde hala aktüelliğini korumaktadır. Küresel toplumun bir parçası ve aynı zamanda gelişmekte olan Azerbaycan ve Kuzey Makedonya da bu sorun ile yüz yüze kalmaktadırlar. Bu çalışma karşılaştırmalı bir derleme makalesidir. Çalışmanın amacı, organ ticaretine karşı mücadele yollarını açıklamak, Azerbaycan ve Kuzey Makedonya'da suçun aşikâr olunması mekanizmalarının yanı sıra her iki ülkenin mevzuatını ortaya koymaktır. Bu çalışmada literatür tarama yöntemi kullanılmıştır. Veriler, arama motoruna anahtar kelimelerin girilmesiyle elde edilmiştir. Çalışmanın bulgularına göre, Azerbaycan ve Kuzey Makedonya insan ticareti için kaynak, transit ve hedef ülke konumundadırlar. Ancak, yetersiz resmi bilgi nedeniyle bu ülkelerde organ ticaretine dair kanıt eksikliği bulunmaktadır.

Anahtar Kelimeler: organ ticareti, insan ticareti, Azerbaycan'da organ ticareti, Kuzey Makedonya'da organ ticareti, organ nakli.

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Introduction

Human organ transplantation is both an important milestone in the development of world medicine and a scourge of the progress itself. Since the first successful transplantation of human organs in 1950, up to the present days, this procedure has brought thousands of people back to life. At the same time, it aroused vital supply and demand for human organs. Organ transplantation contains many ethical issues and the trade of human organs, tissues and cells is immoral, contrary to medical ethics and, due to the many factors, has been criminalized in the most countries (UNODC, 2015, p.6; OSCE, 2013, p. 10).

Nowadays, the black market for organ trafficking which has a very latent activity with involving of scientists and medical personnel is flourishing. Given the strong demand for human organs, trafficking in organs is highly profitable and the disclosure of these crimes due to their specificity is extremely difficult as the criminal groups dealing with this get involved not just donor and recipient but also skilled medicine professionals and experts. There are many evidences that victims of organ trafficking were deceived by the health professionals (Arnovitz and Isitman, 2013, p. 75, 80; OSCE, 2013, p. 10, 17; Pascalev et al., 2013, p.8).

Speaking about trafficking in human organs, we also should highlight the trafficking in human beings, since the organ trafficking is an integral part of it. So according to the Article 3(a) of the Protocol on Trafficking in Person the concept of human trafficking or “trafficking in person” includes the removal of organs. Although organ trafficking is an integral part of human trafficking, there should be drawn a clear line between trafficking in organs and trafficking in persons for organ removal as these crimes have various objects. If the object of trafficking in organ is the human organ, the object of trafficking in persons for organ removal is the person. Trafficking in organ and trafficking in persons for organ removal will not be considered separately in this article. The term “organ trafficking” in this study is comprehensive and includes the both concepts mentioned above. However, the main focus in this study is put on the trafficking in organ.

According to the Council of Europe Convention Against Trafficking in Human Organs, adopted in 2014 such activities as illicit removal

of organs; the use of illicitly removed organs; the illicit solicitation or recruitment (of organ donor or recipient) or the offering and requesting of undue advantages; the preparation, preservation, storage, transportation, transfer, receipt, import and export of illicitly removed human organs; aiding, abetting and attempt are defined as trafficking in human organs.

By ‘illicit removal of organs’ in the Convention has implied following:

- Performing the removal without the free, informed and specific consent of the living or deceased donor, or, in case of the deceased donor, without the removal being authorised under its domestic law;
- Offering or receiving a financial gain or comparable advantage by the living donor or third party in exchange for the organs removal;
- Offering or receiving a financial gain or comparable advantage by the third party in exchange for the removal of organs from a deceased donor (UNODC, 2015, p. 17-19).

The Convention composes on State Parties to criminalize the illegal trade in organs and take all necessary measures to ensure its implementation. This article will examine the legislative framework of the two countries on combating the organ trafficking as well as human trafficking. Another important international tool for combating organ trafficking is the Declaration of Istanbul of Organ Trafficking and Transplant Tourism. In the Summit held in Istanbul in 2008 by The Transplantation Society (TTS) and the International Society of Nephrology (ISN) were discussed such issues as exploitation of vulnerable groups of society for the purpose of organ removal, using their poverty, despair and weakness. Such groups of population as immigrants, prisoners, trafficked women and children being used for these unethical aims categorised as vulnerable groups. As the result was the issuing of the Istanbul Declaration on Organ Trafficking and Transplant Tourism. The declaration introduced markers to help distinguish transplant tourism from transplant travel. According to the Declaration, Travel for transplantation is the movement of organs, donors, recipients, or transplant specialists. Transplant tourism is a negative act aimed to provide the illegal organ trafficking (Delmonico, 2009, 116-117; Danovitch et al., 2013, p. 1307).

As mentioned above, it is impossible to consider the organ trafficking separate from the human trafficking. According to studies, human organs are obtained not only by voluntary consent, but also by coercion and

fraud. In addition, people are abducted, kept in slavery, sold and killed for obtaining their organs (Arnovitz and Isitman, 2013, p. 79). That is why trafficking in organs should be considered in conjunction with trafficking in persons. Such International instruments as Universal Declaration on Slavery, the Universal Declaration on Human Rights, the U.N. Convention Against International Organized Crime (“Palermo Convention”) its additional Protocol, the Brussels Declaration on combating human trafficking and Recommendations adopted by the European Unions’ member states are the effective legislative tools setting standards for dignified life and combating human trafficking and modern slavery (Vujin, 2009, p. 269).

Since the main focus of the study is on a review of legislation, the article discusses the laws of both states on organ trafficking and human trafficking. The choice of Azerbaijan and Northern Macedonia for a comparative analysis was not made by chance. Both countries are situated on the important routes of communication and harmoniously contain European and Asian cultures. Both Azerbaijan and Northern Macedonia faced a migration flow and went through similar political events.

Method

This article is a review study of comparative character. The purpose of this study is to reveal the features of the fight against organ trafficking, to disclose the facts of this crime in Azerbaijan and North Macedonia, as well as analysis of the legislation of both countries. In this study has been used the method of literature review. Data was collected by entering the key words on the search engines. The terms “human trafficking”, “trafficking in person” and “trafficking in human beings” used in this study are interchangeable and should not cause confusion.

Though trafficking in organs and trafficking in persons for organ removal are different crimes having various objects (the object of trafficking in organ is the human organ, the object of trafficking in persons for organ removal is the person), in this study they will collected under the same dome, due to lack of information on organ trafficking in whole in the studied countries. The big limitation of the study is poor official data about the organ trafficking. The lack of evidences on organ trafficking in studied

countries made it difficult to analyze the influence of the national legislation systems on the prevention and combating organ trafficking as well as trafficking in human beings.

According to the findings of this study Azerbaijan and North Macedonia are the source, transit and distant countries of human trafficking. There is not much information about trafficking in human organs. Analyze of legislation of studied countries showed the similar mechanisms of combating organ trafficking as well as human trafficking. The main legislative act reflecting statement on punishment of organ trafficking is Criminal Code.

Findings

Human trafficking

Azerbaijan

Since its establishment on the path of independence, Azerbaijan has actively fought against all forms of crime by adopting laws and improving its potential. Of particular importance for Azerbaijan is the combating human trafficking in all its manifestations. And this is an important issue at this stage of the development of Azerbaijan, since it is not a secret to anyone that the Republic of Azerbaijan is a source, transit, and destination country for human trafficking (Hainzl, 2018, p. 2; Chindea et al, 2008, p. 24). But, if at the beginning the fight against human trafficking was conducting on a general basis of the fight against crimes, then in 2005 there has adopted the Law of the Republic of Azerbaijan on “Combating Trafficking in Human Beings” and in the Ministry of Internal Affairs (here in after referred to as the Ministry) has been established the Main Department on Combating Trafficking in Human Beings that directly subordinated to the National Coordinator for combating human trafficking. These actions have been implemented in the scope of National Action Plan. The main plan of the government actions in combating human trafficking has designated in 3 National Activity Plans covering following periods: 2004-2008, 2009-2013 and 2014-2018. There is necessity to highlight that the working group on combating human trafficking, comprising the representatives of the main anti-trafficking governmental stakeholders has been established

in 2004 and it aimed to assist the National Coordinator (Hainzl, 2018, p. 3; <https://www.insanalveri.gov.az>).

In the scope of the First National Activity Plan, Azerbaijan has opened a shelter intended for the victims of human trafficking. In addition to this, in 2007 year the Ministry has launched the 24 hour hot-line project (152 for internal calls) for the victims of human trafficking which still operates. Azerbaijan has also signed and ratified the major international conventions dealing with human trafficking (McCarthy, 2018, p. 107-108). The following international documents contribute to the construction of National Action Plans: UNODC, Toolkit to Combat Trafficking in Persons (2000); SPTF, Guidelines for National Plans of Action to Combat Trafficking in Human Beings (2000); ICAT, Pivoting Toward the Evidence: Building Effective Counter-Trafficking Responses Using Accumulated Knowledge and a Shared Approach To Monitoring, Evaluation and Learning (2016); ICMPD, Guidelines for Development of a Comprehensive National Anti-Trafficking Response, (2006); ICMPD, Monitoring and Evaluation Handbook for National Action Plans against Trafficking in Human Beings (2010) (Hainzl, 2018, p. 3-4). Azerbaijan is also joined the Palermo Protocols on preventing and punishing the human trafficking (Allahverdiyev and Huseynov, 2013, p.50).

The main step on the effective combating human trafficking in Azerbaijan was the adoption of the Law of the Republic of Azerbaijan on Trafficking in Persons in 2005 and including to the Criminal Code of the Republic of Azerbaijan such articles as 141-1 (trafficking in human beings), 144-2 (forced labour), and 316-1 (disseminating private information about victims of trafficking in human beings) (Combating trafficking, 2013).

According to the article 1.0.1 of the Law of the Republic of Azerbaijan on Trafficking in Persons the term of trafficking in person defined as recruitment, obtaining, keeping, harboring, transporting, giving or receipt of a person by means of threat or use of force, intimidation or other means of coercion, abduction, fraud, deception, abuse of power [influence] or a position of vulnerability, or by giving or receiving payments or benefits, privileges or concessions to achieve the consent of a person having control over another person, for purposes of exploitation; (recruitment, obtaining, keeping, harbouring, transporting, giving or receipt of a minor for purposes of exploitation).

In this article also highlighted that the acts described above shall be considered trafficking in persons even if the means set forth in this provision are not used. This provision is also reflected in the Article 144-1, titled “human trafficking” and included to the Criminal Law in 2005 (Alliyev, 2013, p.2-3; GRETA, 2018, p.19).

According to this article human trafficking is recruitment, obtaining, keeping, harbouring, transportation, transfer or acceptance of a person with a purpose of exploitation under the threat of violence or using violence, threats or other means of coercion, abduction, fraud, deception by misusing ability to make pressure or helplessness, or providing or receiving material and other values, privileges or benefits to get a consent of the person that exercises control over another person.

In addition to the Article 144-1, the Ministry evaluates the following articles of the Criminal Code of the Republic of Azerbaijan as components of human trafficking: 144-2 (forced labour); 144-3 (illegal acts relating to travel or identity documents with a purpose of trafficking in human beings); 243 (involving in prostitution); 171 (involving of minors on prostitution); 171-1 (distribution of child pornography); 244 (maintenance of prostitution hose); 151 (coercion into actions of sexual nature); 137 (sale, purchase and compulsion to withdrawal for transplantation of body organs or tissues of a person); 242 (illegal distribution of pornographic materials or object); 106 (slavery); 172 (substitution of another’s child); 174 (illegal adoption) and 316-1 (dissemination of confidential information about the victims of human trafficking) (Table 1).

Along with active effort on combating human trafficking the government of the Republic of Azerbaijan also creates the necessary conditions for the rehabilitation of the human trafficking victims. In this way many victims of human trafficking have been provided by various types of short and long-term assistance like medical, psychological and legal aid, housing and so on. (McCarthy, 2018, p. 111, 113).

Years:	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	
Total of criminal facts:	162	215	283	403	340	212	169	222	228	272	317	314	295	285	
Article of the Criminal Code	Amount														
144-1	1	29	72	79	79	67	67	89	78	98	109	141	142	144	
144-2	-	-	-	1	3	1	2	2	3	4	7	6	6	4	
144-3	-	-	-	-	-	-	-	-	-	3	11	19	26	35	
243	54	57	49	116	92	62	43	45	69	76	57	41	49	60	
171	4	7	8	10	5	2	2	2	3	2	1	4	7	5	
171-1	-	-	-	-	-	-	-	-	-	-	-	-	1	-	
244	93	112	150	180	148	73	51	75	66	82	123	99	58	24	
151	5	5	1	10	3	2	2	4	6	5	6	2	3	4	
137	-	-	-	-	1	-	1	-	-	1	-	-	-	1	
242	5	5	3	7	9	5	1	5	3	1	3	2	3	8	
106	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
172	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
174	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
316-1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Persons committed crimes (according to the court proceedings)	Total: 2525	153	207	300	349	289	137	97	145	124	149	171	162	121	101
As well as Human Traffickers	Total: 543	1	23	93	91	76	39	20	22	17	26	32	36	33	34
Victims of Human Trafficking	Total: 885	1	86	101	78	91	34	29	53	56	54	63	70	71	98

(Table 1. Statistics on Crimes Registered in the Field of Combating Human trafficking in the Republic of Azerbaijan. Table has been taken from <https://www.insanalveri.gov.az/?/az/menu/59/>)

North Macedonia

Situated on the Balkan Route mostly used for human trafficking, North Macedonia is a source, transit and destination country for it (Dimovski,

Babanoski and Ilievski, 2013, p.206; Department of State, 2019, p.61, 63, 105, 207-208, 360; GRETA, 2017b, p.7). There are no explicit statistics on human trafficking in the country, as there are no reliable data on the number of victims and the number of persons who committed this crime. Most information is approximate as the true amount of victims and the numbers of detected ones are different (IOM, 2004, p.73-74, 93). Some reliable information can be obtained from the reports of Non-Government Organizations (NGO). So, according to the data provided by the NGO Coalition "All for Fair Trial" in the scope of the Project "Countrywide Observation of Trafficking in Human Beings Related Trials", in 2015 during the 9 months (from January to September) there has been observed 32 cases, the main subject of the hearing of which was the trafficking in human beings (Velkoska, 2005, p.11).

The active fight with human trafficking in North Macedonia (at that time Former Yugoslav Republic of Macedonia, hereinafter Macedonia) has been started in 2000 when as the part of the collaboration on combating human trafficking in South Eastern Europe had established the Stability Task Pact Force for Trafficking in Human Beings (SPTF) and adopted the United Nations Convention on Transnational Organized Crime and its Protocols (the Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, Especially Women and Children *and* the Protocol against Smuggling of Emigrants on Land and in the Air). In 2002 Macedonia included to the National Action Plan the statements on prevention the human trafficking. This definitely was the huge step on combating human trafficking in Macedonia, implying the measures on combating human trafficking in governmental level. But this Section of Plan had described the prevention procedure in general terms and did not reveal the detailed and guiding program for the effective fight the human trafficking. However, even this program was not implemented due to lack of financial resources (Limanowska, 2005, p.7, 138). The National Action Plan and Strategy to combat human trafficking were adopted 4 years later in 2006 (Vujin, 2009, p.286).

But the Macedonian government passed the long way to improve its legislation and adopted new Action Plans containing more comprehensive anti-trafficking activities. So the national action plan for 2017-2019

years clearly shows a positive tendency in improving domestic capacity with more focus on illegal migration and victim protection. In 2004, 2008 and 2015 years in Macedonia have been carried out the legislation reforms aimed to comply with international standards (Kiprijanovska, 2008, p.120; GRETA, 2017b, p.8, 10). Despite all the efforts have been made, Macedonia has a long way to pass in order to meet the required standards for the liquidation of trafficking in human beings (Department of State, 2019, p. 358).

The legislation acts of Macedonia, directly related to the combating human trafficking are following:

- Law on ratification on the Convention for protection of children from sexual exploitation and sexual abuse (“Official Gazette of the Republic of Macedonia” No.135/2010);
- Criminal Code (“Official Gazette of the Republic of Macedonia” No. 37/1996; 80/1999; 4/2002; 43/2003; 19/2004; 81/2005; 60/2006; 73/2006; 7/2008; 139/2008, 114/2009, 51/2011, 135/2011, 185/2011);
- Law on witness protection (“Official Gazette of the Republic of Macedonia” No. 38/2005, 58/2005).

Nevertheless, the Criminal Code is the main legislative act reflecting the provisions on trafficking in persons and providing punishment for this criminal activity.

According to the Article 418-a any person who uses force, serious threats, leads to delusion or uses other forms of coercion, abduction, deceit, with abuse of the person’s position or state of pregnancy, incapacity or physical or mental inability of another person or by giving and receiving money or other benefit in order to receive the consent of a person that has control over another person, or in other manner recruits, transports, transfers, purchases, sells, harbours or receives persons for the purposes of exploitation by means of prostitution or other forms of sexual exploitation, pornography, forced labour or servitude, slavery, forced marriages, forced fertilization, illegal adoption or other similar relations or illicit transplantation of parts of the human body is subject to punishment.

The maximum term for trafficking in persons may be at least 8 (eight) years in prison sentence (ASTRA, 2013, p.116-118).

Should be highlighted the fact that government of Macedonia the first in its region opened a shelter for international victims, migrants traf-

ficked for labour and sexual exploitation (IOM, 2004, p.72). Also Macedonian legislation system allows to the foreign women, who became the victim of human trafficking to apply for asylum and/or refugee status (Vu-jin, 2009, p.286).

Organ trafficking

Azerbaijan

Along with the 137th article of the Criminal Code of the Azerbaijan Republic, the basic legislation act regulating the fight against human trafficking is Law No:726-IQ “On Transplantation of Human Organs and (or) Tissue”, adopted on the 28th of October, 1999 (GRETA, 2018, p.19). According to the 17th article of this Law human organ and/or tissue may not be an object of trade. Any legal or natural person engaging in trade in human organs and/or tissues shall be liable in the manner prescribed by the legislation (GRETA, 2017a, p.136). Depending on the gravity of the offence, the Criminal Code provides such punishments for this crime as penalty fee, correction works or imprisonment with deprivation of the right to hold the certain posts or to engage in the certain activity. The maximum sentence prescribed by law is 5 years imprisonment (Criminal Code of Azerbaijan Republic, a.137).

As seen from the Tab.1 the number of solved organ trafficking crimes from 2005 to 2018 is just four. This cannot be an indicator of a small amount of crimes at all. Most likely this is due to high latency of these crimes and the lack of experience of law enforcement agencies in the disclosure of them. As we know the organ trafficking is a complex area of criminal law, what requires specific knowledge and special training of the subjects of criminal investigation. It is also known that Azerbaijan is being used by international organised crime network due to its strategic geopolitical location. As was mentioned before the country is a transit and source country for the human trafficking. Azerbaijan also has a poor social and economic state, which leads to the high rate unemployment (IOM, 2002, p.35). All this together creates favourable conditions for the formation of vulnerable victims who are ready for any desperate step, up to the sale of their organs.

In addition, there is a huge gap in the research of the organ trafficking in Azerbaijan. There are no academic publications dealing particularly with this, what makes impossible the exact review and detailed analysis of both the presence and the detection of this crime. However, there is no doubt that Azerbaijan has a positive tendency in combating human trafficking as well as organ trafficking. However there are lot of problems in the area of organ trafficking including the lack of information and inconsistency of legislation with international legal acts So, Azerbaijan has not signed and ratified the Council of Europe Convention against Trafficking in Human organs. There are no trainings among the medicals and investigators on this field and no any powerful step on strengthening of the combating human trafficking (GRETA, 2018, p.19).

North Macedonia

There is a no any official statistic and reliable information on organ trafficking in North Macedonia. The reached sources consist scarce data on this issue, what makes it difficult to systematize and analyze them. For example, according to the unofficial, but “reliable confidential” sources, indicated in the IOM report on trafficking in persons in Balkan Region in 2004, Roma children have been trafficked for the purpose of organ removal by their families. The destination countries for “sold” child victims were Albania or Greece (IOM, 2004, p. 85). The lack of information does not let to declare about the facts of organ trafficking in North Macedonia. However, a lack of information cannot be evidence of lack of facts. It is preferable to talk about the absence of organ trafficking, referring to official sources, than to analyze other secondary sources (Božić, 2016, p. 140). But the principle “if one does not see a problem, the problem does not exist” is not suitable and basically very danger position of authorities (Vujin, 2009, p.283).

Nevertheless, Northern Macedonia is adapting its laws to international standards for successful combating human trafficking. The trafficking in human organs is criminalised by the Macedonian law under the Article 418-a of the Criminal Code. Article 10 of the Macedonian Law on Removal and Transplantation of Human Body Parts also prohibits the trade of human organs. It also prohibits the advertisement or other marketing activity in the purpose of trade the human organs, cells and tissues. Ac-

According to the Group of Experts on Action Against Trafficking in Human Beings Reports on the Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, the Macedonian Association for Transplantation of Organs and Tissues supported the Declaration of Istanbul on organ trafficking and transplant tourism banning the human trafficking and transplant tourism issued in 2008. Association undertook to incorporate the principles of this declaration in its transplant operations (GRETA, 2017b, p.21; Božić, 2016, p.142).

Conclusion

Both Azerbaijan and North Macedonia are the signatories to the main International Conventions on combating trafficking in human beings, but such an important document as Council of Europe Convention against Trafficking in Human Organs has not been signed by studied countries (Chart of Signatures, 2019).

Despite many shortcoming and gaps in the groundwork, the effort of Azerbaijan and Macedonia on developing the legislation and active combat about human trafficking can be highly evaluated. A small amount of data on crimes of organ trafficking cannot be an indicator of their absence in countries located on important strategic routes and having a sufficient number of vulnerable populations. Most likely this is due to the difficulties of disclosing and identifying these crimes seeing the specifics of their execution.

Based on this study, the following are recommended:

- Ratification of the Council of Europe Convention against Trafficking in Human Organs;
- Conducting joint trainings with medical personnel and representatives of law enforcement agencies;
- Raising public awareness through social sports, media and other information resources;
- Inclusion in the school curriculum of awareness-raising lessons on organ trafficking
- Analyze the push-factors and victimology and eradicate them by adopting social policy programmes to prevent the rising of vulnerable groups.

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