

CHALLENGES OF THE COURTS – WHEN IS THE CRIMINAL A VICTIM OF HUMAN TRAFFICKING ?

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Every year illegal trafficking in women, men and children takes place across country borders. To be able to stop this development there is need for shared knowledge and understanding of new forms of organized exploitation of trafficked persons, to coordinate efforts against human trafficking at international level, to present best practices of cross-border and regional ant-trafficking actions and activities in all countries, to discuss social consequences and status of victims, to find common point of view in understanding: who they are – criminals or victims.

**DIRECTIVE 2011/36/EU OF THE
EUROPEAN PARLIAMENT AND OF
THE COUNCIL**

of 5 April 2011

**on preventing and combating trafficking
in human beings and protecting its
victims, and replacing Council
Framework Decision 2002/629/JHA**

14) Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, **be protected from prosecution or punishment for criminal activities** such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimization and to encourage them to act as witnesses in criminal proceedings against the perpetrators.

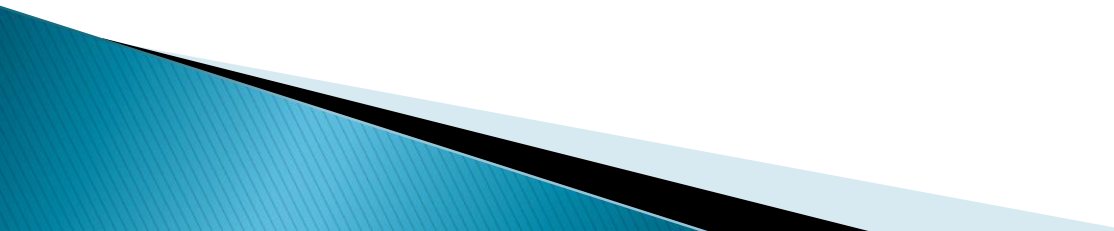
Article 8

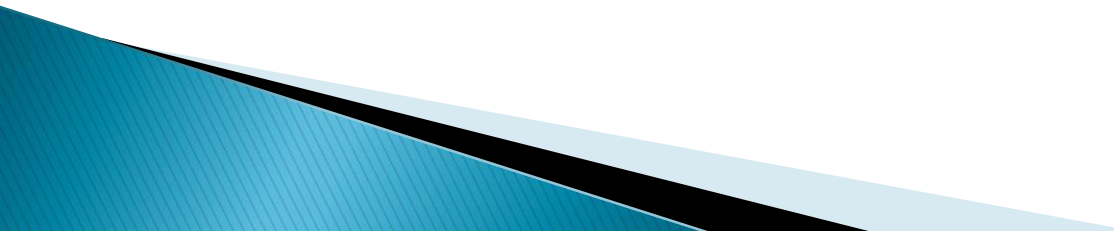
Non-prosecution or non-application of penalties to the victim

Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

Lithuania is a source, transit, and destination country for women and girls subjected to sex trafficking, as well as a source and destination country for men subjected to labor trafficking. About 40 percent of identified Lithuanian trafficking victims are women and girls subjected to sex trafficking within the country. Lithuanian women are also trafficking victims in Western Europe and Scandinavia. Some Lithuanian men are subjected to forced labor in Ireland, the United Kingdom, and the United States, including in agriculture.

The Lithuanians suffer from human trafficking mostly because of the following reasons:

- Men and women believe in “do-gooders” and that nothing bad will happen to them.
 - Men and women accept job offers without checking information about the nature of work and a person offering it.
 - Men, women and children agree to shoplift on behalf of human traffickers, innocently hoping that nobody will find out, they will need to do it only once or to the extent they will want, and they will receive an agreed pay for that.
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- Mostly women accept the suggestion of a man, with whom they have just got acquainted, to travel, visit competitions or move to a foreign country without finding out who that man actually is, if this is a person that he introduced himself; they travel without money, without speaking these languages, even without vocational education, they have mental or physical disability, etc.
 - Women usually accept proposals to marry the citizens of the third countries, innocently hoping that they will not be abused, will receive pay and it will be simple to escape from such a groom or later nullify the marriage.
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At that moment we feel that Lithuanian children and adults are increasingly forced to engage in criminal activities, such as shoplifting, theft, and drug selling in Nordic countries and Western Europe.

Statistics of human trafficking for criminal acts in 2015 in Lithuania

32 persons (8 women and 17 men, 2 girls and 5 boys) suffered from human trafficking for criminal acts, target countries: the United Kingdom (9), the Netherlands (6), Finland (3), Germany (3), Columbia (3), Lithuania (3), France (2), Denmark (1), Norway (1), Russia (1), the United Kingdom and France (1).

This safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in.

What is it means VOLUNTARILY?

It is the main question for the courts, for the judges of all the countries.

Examples from the cases

1. Four young men (one of them – juvenile) that did not have firm social relationships, convicted and unemployed, were used to recruited by offenders. Criminals used to take them to Holland, Germany and Poland, from where they had to take stolen cars to Lithuania. Some recruiting men were told at once what they would have to do, others were promised to be given job, but abroad it used to appear that there was no job, and if they wanted to return to their homeland, they would have to drive a stolen cars.

2. Seven men were found guilty for the attempt on life or/and having committed several episodes of human trafficking. The aggrieved men were promised to be given a chance to legally earn money, but they actually were made to help telephone frauds – they had to take money from deceived local people and send it to Lithuania.

The victims were tempted by suggestions of well-paid legal job due to their poor financial situation, little experience of life, whereas used to be gullible due to their disability. Taken abroad they were forced to commit various crimes.

Court sentenced defendants with the imprisonment from 5 to 11 years.

3. The couple from Taurage heard the sentence because, acting as an organized gang, they used to promise a legal job abroad to people, but later they used to enforced them to steal abroad. In this case there was six victims that used to be promised paradise abroad by the couple, but people who hoped for this appeared to be in hell. It was the woman who suffered the most severely from this couple. The woman agreed to go to Norway, as she hoped to earn money that she needed to support three children. When they arrived in Norway, the woman found out that there was no job like that and that she would have to go and shoplift.

When the women started protesting the man from this gang hit her, scalded the legs with hot water, threaten to kill and added that he had been in prison for cutting the head of a human. The stealing woman was twice arrested by officers. She kept silent for the first time, but during the second time she decided to reveal in what slavery she was. The same nightmare happened to five men.

The couple use to take the Lithuanians to different countries – Germany, the United Kingdom, Denmark, Norway and Finland. The fabula was always the same.

RESULT: all the six aggrieved were sentenced for thefts abroad by the courts of these states, some of these people had to stay in prison for several months.

In the year 2015 suspicions were claimed to 53 people (48 men and 5 women, all of them – the citizens of the Republic of Lithuania), accusation – to 32 people: 18 persons (14 men, 4 women).

In the year 2015 in the courts of first instance of the Republic of Lithuania 10 criminal cases were received regarding human trafficking, 7 criminal cases examined.

The examination of criminal cases in court took from 1 year 2 months to 3 years 11 months, one case was approximately examined in 2 years and 3 months.

In the year 2015, 16 persons were sentenced in the courts of first instance of the Republic of Lithuania (all them – the citizens of the Republic of Lithuania): 14 men (9 men – due to human trafficking for prostitution and 3 men – regarding human trafficking for criminal acts) and 2 women (due to human trafficking for prostitution).

The imprisonment from 3 to 12 years was appointed.

The change of the attitude towards a victim is especially relevant for the practice of Lithuanian courts, where it quite often happens when the order of interrogation in the case of human trafficking and the evaluation of evidence (often inconsistent and changeable) remain quite a big challenge to the subjects of the institutions of judicial system.

This is because the victims of human trafficking become victims usually mainly of the some kind of vulnerability – difficult financial situation, certain features of mental health, due to the lack of social skills, social vulnerability, the lack of self-confidence, etc.

These aspects, having caused the vulnerability of a victim during criminal act do not disappear, but they even become stronger in the course of time.

Therefore, it has become necessary to specify the victim- centred model of Penal Code.

This model obliges to design mechanisms, ensuring a suitable protection of the rights of a victim of human trafficking and the protection of legal interests – suitable representation, respectful behaviour with them during criminal procedure, ensuring physical and emotional safety. Special attention is paid for the objective to avoid repeated victimization, which is mostly caused by the inattentive, formal behaviour of the institutions of judicial system, repeated, unprofessional interrogations, testifying with culprits participating and other similar factors. The subjects of judicial system are encouraged to collaborate both among themselves and with non-governmental organizations that work with such victims.

On the 1st March 2016, when new changes of the Code of Criminal Procedure inured, national courts gained new tools that enable to ensure not only additional protection of the rights of a victim of human trafficking and the protection of legal interests, but also to avoid such situations when exculpatory adjudgement are made due to the unwillingness and inability of an aggrieved to testify, determined by the emotional state of the aggrieved.

First of all, such a tool is introducing a new form of representation. The victim of human trafficking has a right to have an attending person; this can be, for example a representative of non-governmental organizations or another person who has gained trust of the victim, having a right to accompany him/her during the entire process.

Also, courts, aiming to avoid a situation when the aggrieved, having encountered the culprit in the session hall face to face, does not testify or changes the evidence given in his/her pre-trial investigation, or as it quite often happens in the practice of courts, avoids coming to testify in court and court loses one of the most important sources of evidence, it has a possibility to perform the interrogation of a victim of human trafficking in a different way, avoiding secondary victimization (for example, in a distant way, using internal television, the room of the interrogation of a child, etc.).

Another step to help victims:

More than 60 volunteers are ready to help the victims and witnesses in seven major Lithuanian courts: the District Court of Vilnius City, Vilnius Regional Court, Panevėžys Regional Court, District Court of Klaipėda City, Šiauliai District Court, Šiauliai Regional Court and Lithuanian Court of Appeals.

On the 11 of October there was the meeting in the Court of Appeal of Lithuania of all representatives involved in the fighting against human trafficking : judges, prosecutors, police officers, NGO, Media, even lawyers participated in this meeting.

The purpose was only one: the same understanding of meaning “victims of the trafficking of human beings” .

THANK YOU FOR
THE ATTENTION

