

## **TRAFFICKING IN HUMAN BEINGS – THE CHALLENGES OF TODAY. EVIDENCE RELATED PROBLEMS IN THB CASES**

Trafficking in human beings is a crime, which violates the fundamental human rights and freedoms, and usually goes beyond the borders of one state, thus, human trafficking is a global problem, which must be addressed by bringing together the forces of separate states and organizations.

The most widespread and commonly-used definition of trafficking in human beings is established in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations (UN) Convention Against Transnational Organized Crime adopted on 15 November 2000.

Trafficking in persons is defined in Article 3 of the above-mentioned protocol: “Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or of benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs”. A very important moment of the Protocol is the provision that the consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant where any of the means set forth above have been used, while the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered trafficking in persons in either case.

The concept of trafficking in human beings essentially corresponding to the concept provided by the UN was established in the Framework Decision on Combating Trafficking in Human Beings adopted by the EU Council on 19 July 2002.

As of 5 April 2011 this framework decision was replaced by the Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims. This Directive established the minimum rules on criminal offenses and

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penalties related to trafficking in human beings in the entire European Union, also, provided for the measures for the efficient prevention of trafficking in human beings and the enhancement of protection of victims. Taking into consideration the newly occurring forms of trafficking in human beings, this Directive established a broader definition of the trafficking in human beings than the one presented in the Framework Decision. The concept of trafficking in human beings presented therein includes such new forms of human exploitation as the exploitation of begging, the exploitation of criminal activities (exploitation of a person to commit pick-pocketing, shop-lifting, drug trafficking and other similar activities), trafficking in human beings for the purposes of the removal of organs, also, illegal adoption or forced marriage. Member States had to adopt laws on the implementation of the provisions of this Directive by 6 April 2013.

Currently, the challenges of combatting trafficking in human beings are mainly related to the fact that new forms of this criminal activity are emerging and rapidly spreading, the prevention and detection of which requires new methods and instruments. Traditionally, the problem of trafficking in human beings was related to the recruitment of women and selling them for prostitution, however, now, with currently spreading new above-mentioned forms of trafficking in human beings (sale of humans for illegal, unpaid, slavery-like work, transportation of persons to foreign countries for shop-lifting or begging), changing activities of criminal groups, upon the occurrence of new models of criminal activities it is very important for the respective national law enforcement authorities to be able to properly respond to new forms of crime. For example, the Lithuanian police officers are well aware of a model used for the recruitment of girls for prostitution; however, trafficking in human beings in other areas of exploitation is still new to law enforcement authorities.

The description of a crime of trafficking in human beings appeared in the Lithuanian criminal law in 1998. It provided for liability for the sale or other transfer or acquisition of a human being with the purpose of sexual exploitation, forced prostitution or for the receipt of certain financial or other personal benefits, also, for the transportation of a person for prostitution to Lithuania or outside of it. On 1 May 2003, upon the entry into force of a new Criminal Code of the Republic of Lithuania, trafficking in human beings was defined very broadly, by indicating that a person who sold, purchased or otherwise transferred or acquired a human being with an intention to

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obtain pecuniary or other personal gain, shall be sentenced to imprisonment for the period of up to 8 years.

In 2005, when establishing the requirements of international and EU laws in the Criminal Code of the Republic of Lithuania, a very detailed definition of trafficking in human beings was formed, which, with certain amendments made in 2012, has been used up until now. Until 2012, according to criminal laws of the Republic of Lithuania, trafficking in human beings was associated with an intention to involve a person in prostitution, exploitation of the pornography of others or of forced labour. In 2012, the concept of trafficking in human beings was supplemented by the exploitation for slavery or other conditions similar to slavery, exploitation not only of the prostitution and pornography of others, but also other forms of sexual exploitation, not only the exploitation of forced labour, but also forced services, including begging, or the exploitation of criminal activities and other purposes.

Currently, the liability for human trafficking in Lithuania is established in several articles of the Criminal Code. The main article is called trafficking in human beings; however, there are other articles that directly or indirectly impose a criminal penalty for the above-mentioned activities.

The following Articles directly set a criminal penalty for trafficking in human beings: exploitation for forced labour and services (Article 147<sup>1</sup>), purchase or sale of a child (Article 157), exploitation of a child for pornography (Article 162), gaining profit from another person's prostitution (Article 307), involvement in prostitution (Article 308). A person having committed these crimes almost always commits the crime of trafficking in human beings, because all these acts are related to the acquisition or transfer of a human being.

Such Articles as the abduction of a child (Article 156), unlawful deprivation of liberty (Article 146), restriction of freedom of a person's actions (Article 148), illegal crossing of the state border (Article 291), unlawful transportation of persons across the state border (Article 292), organisation of travels of citizens of the Republic of Lithuania abroad for the purpose of staying there illegally or abandoning them without assistance (Article 293) indirectly impose a criminal penalty for trafficking in human beings.

On 1 May 2004, upon the Lithuania's accession to the European Union, and, later on, the Schengen area, upon the disappearance of internal border controls between the European Union

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Member States, when there were no obstacles left for persons to leave to live and work in other EU countries, the issue of trafficking in human beings became even more severe in Lithuania as well as in other European Union countries. Lithuania became not only a country of the export of women, but also of transit between the Eastern and Central European countries. As mentioned before, currently the flows of persons (mainly of men and minors) transported from Lithuania to more economically stronger countries for begging or performing minor shop-lifting acts are also constantly increasing.

The efforts of the Republic of Lithuania to combat trafficking in human beings are positively assessed at the international level. The US Department of Justice placed Lithuania among countries that are combating trafficking in human beings in the most advanced ways. In 2011, just like in previous years, Lithuania was placed onto Tier 1 among countries properly combating trafficking in human beings. Every three years programmes for the prevention and control of trafficking in human beings are approved in Lithuania, also, the national human trafficking working group made up of representatives of responsible authorities and organizations, a specialized police unit and specialized non-governmental organizations operate in Lithuania. Moreover, Lithuania has introduced an innovative software, which helps with the investigation of crimes related to human trafficking and is linked to the databases of Interpol and Europol; contacts and cooperation are constantly maintained with foreign responsible institutions, especially of those countries to which citizens of Lithuania are sold (United Kingdom, Germany, Spain, Norway, Sweden, etc.). The US Department of Justice named the fact that in 2011 Lithuania initiated three times more pre-trial investigations than in 2010 (21 investigation in 2011, 7 investigations in 2010), ensured that all persons convicted of human trafficking were sentenced to imprisonment, also, increased funding for organizations taking care of victims of human trafficking, as positive signs of combating trafficking in human beings.

The number of pre-trial investigations of trafficking in human beings initiated in the Republic of Lithuania varies:

- In 2012, 11 pre-trial investigations were started (a total of 44 investigations of trafficking in human beings in accordance with various articles of the Criminal Code were being executed in 2012);

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- In 2011 – 21 pre-trial investigation was initiated;
- In 2010 – there were 7 pre-trial investigations;

The fact that the number of pre-trial investigations initiated in 2012 decreased does not mean that the combat with trafficking in human beings became weaker, but rather that the preventive work has improved and that some persons engaged in human trafficking in Lithuania have already been sentenced or pre-trial investigations were initiated against them.

Preventive work is very important in combating trafficking in human beings. In Lithuania, this work is especially relevant in smaller towns, rural areas, where unemployment rate is high, also, in orphanages, schools and risk families. In order to enhance the prevention and control of trafficking in human beings, local, municipal human trafficking prevention and control working groups are established in Lithuania, which are better informed of issues arising in a particular municipality; also, educational programmes on dangers of human trafficking are constantly carried out.

One of the challenges of combating human trafficking is a proper execution of a pre-trial investigation and collection of sufficient evidence so that persons having committed such a crime are prosecuted. In 2012, 8 pre-trial investigations of trafficking in human beings were discontinued in Lithuania. Most usually they were terminated because of the unreliability of testimonies of victims and lack of other objective data supporting the testimonies of victims. One of the priority tasks of law enforcement agencies in combating human trafficking is the ensurance of proper collection of evidence with particular attention on professional development of police officers working in smaller towns.

The Prosecutor General's Office of the Republic of Lithuania distinguishes the following main problems encountered during a pre-trial investigation: long-lasting execution of requests for legal assistance in foreign countries and insufficient quality thereof, inability to interview victims and witnesses due to the change of a place of their residence or emigration, long investigations performed by specialists and experts, also, refusal of victims to testify against traffickers.

Changing testimonies of victims as well as the refusal to testify is one of the key issues in combating trafficking in human beings, thus, it is very important to ensure proper assistance for

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victims and provide protection to them throughout the entire criminal proceedings as well as to shorten the duration of investigations carried out, as victims tend to break down psychologically during a long criminal process. The Prosecutor General's Office of the Republic of Lithuania suggests that international recommendations to interrogate victims with a pre-trial judge only once during the pre-trial investigation are strictly complied with, since several interrogations and comments made by suspects during these interrogations encourage victims to refuse to attend a court hearing and to refrain from testifying. Here it should be noted that criminal proceeding laws of the Republic of Lithuania do not provide for a possibility to not invite a victim to a court hearing and stick to his/ her testimonies made during a pre-trial investigation only. Only once a person refuses or avoids testifying in a court hearing, his/her testimonies given to a pre-trial judge during a pre-trial investigation can be proclaimed.

Each chain link – prevention, control, crime detection, conviction of guilty persons, and assistance to a victim of trafficking - is very important in combating trafficking in human beings. Courts are assigned the function of the enforcement of justice in such a combat, by punishing guilty persons and imposing sentences on them ensuring not only the execution of justice, but also the implementation of the prevention function.

In 2012, Lithuanian courts of first instance received 6 criminal cases in accordance with Article 147 of the Criminal Code (Trafficking in Human Beings) and 3 criminal cases in accordance with Article 157 of the Criminal Code (Purchase or Sale of a Child). In 2012, 3 criminal cases in accordance with Article 147 of the Criminal Code providing for a criminal liability for human trafficking were heard. 7 persons were sentenced to imprisonment for the period from 4 to 7 years. There were no acquitted persons in 2012.

In comparison, in 2011 8 criminal cases were received in courts, 3 were heard and 17 persons were sentenced, all of them being sentenced to imprisonment;

In 2010, 7 criminal cases were examined and 9 persons were sentenced to imprisonment for the duration of 7 – 11 years.

In criminal cases examined in courts of the Republic of Lithuania in 2010 – 2012, where persons were sentenced for trafficking in human beings, the trends remained the same as in cases

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heard in previous years. Usually, the convicts worked in organized groups and groups of associates, men were mostly involved in criminal groups, though there also were some female convicts.

A model of criminal activity can be distinguished in Lithuania where under the cover of a model agency young girls were promised a well-paid modelling work and were transported to the United Arab Emirates to provide sexual services to sheikhs.

In 2008 a criminal case was examined sentencing three women for transportation of underage girls to the United Arab Emirates for prostitution. Also, for similar offenses two women were sentenced for transporting girls to the United Arab Emirates in one criminal case heard in 2010, thus severely shaking up the fictitious modelling agencies, the main activities of which was the exploitation of young girls for prostitution. These cases had great repercussions in the society, were widely discussed in media and thus helped to inform a greater part of society about the dangers of human trafficking, drawing a particular attention to the fact that traffickers do not have to necessarily be spooky-looking dangerous men, but can also be women engaged in legal activities, appealing to young girls dreaming of a profitable modelling work.

Over the past six years people in Lithuania have been sentenced exclusively for trafficking girls for prostitution. There haven't yet been any cases heard in courts of the Republic of Lithuania related to other forms of exploitation or exploitation of males. Girls are usually transported to foreign countries (United Kingdom, Germany, Spain), taking advantage of the lack of their education, difficult material or family situation and other circumstances determining greater vulnerability of girls.

Over the past three years, the Article of the Criminal Code of the Republic of Lithuania providing for liability for the purchase or sale of a child was applied only in one criminal case, where two defendants were sentenced for arranging transportation of an underage girl (17 years of age) to a foreign country for prostitution. There haven't been any cases related to trafficking in small children examined in the courts of Lithuania.

As mentioned before, in 2012 not a single person was acquitted in cases related to trafficking in human beings, however, in 2011 persons found guilty of human trafficking with respect to some girls were acquitted in the same case on trafficking in human beings against other

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girls having insufficient evidence on the fact that the accused persons committed all acts imputed to them.

It is understandable that the reaction of victims of trafficking as well as the society to court judgements on the acquittal of persons accused of a very serious crime (trafficking in human beings) is quite hard and hostile, however, despite any external circumstances, it is very important for courts to remain objective and to consider not only the rights of victims, but also to ensure the right of the accused to a fair trial, making sure that no person is sentenced in presence of a reasonable doubt as to his guilt.

The above-mentioned court judgements to acquit persons accused of trafficking in human beings were mainly based on insufficient amount of evidence in a case, and, at a reasonable doubt as to the guilt of an accused person, a court was left with no other choice but to acquit such a person.

The burden of proof in criminal cases of trafficking in human beings is undoubtedly made more difficult by international nature of such offenses and the necessity to collect evidence in foreign countries. Also, different legal systems in foreign countries affect the investigation of criminal acts and the examination thereof.

In one of the criminal cases in Lithuania (case No. 1A-66/2011), the appellate court acquitted persons accused of trafficking in human beings, because their guilt was essentially based only on testimonies of victims made during the pre-trial investigation to police officers of Great Britain and Latvia. Meanwhile, according to the Law on Criminal Procedure of the Republic of Lithuania, testimony given by a person in a pre-trial investigation is not considered sufficient evidence in itself; it can only help to evaluate the reliability of other evidence collected in a case. In Lithuania, only testimonies given by a person during a court hearing or testimonies made to a pre-trial judge can be treated as evidence. In the above-mentioned case, the victims failed to show up in court hearings, thus they were not interrogated in trial, even though the court had undertaken various measures to locate and interview them. During the entire process, the defendants did not have a chance to contest the testimonies of the victims or ask them questions, thus, the court of appeal held that such testimonies of victims could not have been treated as evidence and they could not form the basis for the conviction. In the absence of other evidence that the accused were guilty

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of trafficking in those particular girls with the intension to involve them in prostitution, the judgement of acquittal was made.

The jurisprudence of the European Court of Human Rights also clearly establishes the violation of human rights in cases where the conviction of a person is based solely on the testimony of a person whom an accused person had a chance to ask questions, while their testimonies are read in the proceedings, when they can be very important in finding a person guilty ( *Unterpertinger v. Austria*, no. 9120/80, judgement of 24 November 1986; *Delta v. France*, no. 11444/85, judgement of 19 December 1990, *Balšán c. République tchèque*, no. 1993/02, arrêt du 18 juillet 2006, etc.).

When investigating cases of trafficking in human beings, the Lithuanian police officers also come across various problems arising due to the different legal frameworks of foreign countries. Officers name cases when they address their colleagues in foreign counties asking them that the testimonies given by victims are approved by court, but it is hard for foreign officials to understand why it is necessary to do so, as testimonies given to a pre-trial investigation officer are enough in their legal system.

The burden of proof in cases of trafficking in human beings is also complicated when there is no other data in a case evidencing the guilt of persons, except for testimonies of anonymous witnesses or victims. The Code of Criminal Procedure imperatively establishes that a conviction cannot be based solely on testimonies of anonymous victims or witnesses. A conviction can be based on such testimonies only when they are supported by other evidence. A provision that the guilt of a person cannot be based on testimonies given by anonymous witnesses and victims only has been used multiple times in the practice of the European Court of Human Rights.

As already mentioned, it is often hard to collect other evidence than testimonies of victims and witnesses in cases of human trafficking, while if victims or witnesses are made secret, their anonymous testimonies become insufficient for finding persons guilty of trafficking in human beings.

This is precisely the situation which had formed in the previously mentioned criminal case heard in appeal procedure in Lithuania in 2011. Judgements of acquittal were made with respect to several criminal acts of trafficking in girls in order to involve them in prostitution incriminated against the accused persons, because there was no other evidence of their guilt, except for

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testimonies of anonymous victims and witnesses. The appellate court determined that the victim was made anonymous by the officials of Great Britain, while the witnesses – by Lithuanian officials. In hearing the case in an appeal procedure, the court concluded that the anonymity of victims and witnesses in this stage of case hearing was no longer justified, because the accused and their defenders claimed throughout the entire process that the data identifying the anonymous persons was no secret to them, which should be kept by pre-trial investigation officers in the application of anonymity to them. The appellate court addressed the officials of Lithuania and Great Britain with regards to the declassification of victims and witnesses, who were held anonymous, however, the Lithuanian officers refused to declassify such information, having determined that there was no legal basis for doing that; in the meanwhile, police officers of Great Britain responded in writing that the request to declassify the victim could not be fulfilled as the place of residence of this victim or other contact details were not determined. Having been denied an opportunity to directly interrogate the above-mentioned persons in a public court hearing, the court ruled on the acquittal of the defendants.

In cases where trafficking in human beings occurs by deception rather than a physical or psychological violence, for example, when victims claim that they have been informed only about working as a masseur or a dancer, while defendants argue that they were also informed about the necessity to provide sexual services, a court is faced with a serious problem in finding the persons guilty of trafficking in human beings, as most usually there is no other evidence in a case supporting the testimonies of victims claiming that they were deceived. Usually, persons accused of human trafficking admit to having profited from the prostitution of other person or transporting a person for prostitution, but do not admit to human trafficking, indicating that victims were aware of having to engage in prostitution and were properly informed about the nature of work before going abroad.

In cases where victims indicate that they agreed to engaging in prostitution or being exploited in other ways, it is very important for both the investigators as well as courts to keep in mind the fundamental rule for declaring trafficking in human beings a crime; this rule establishes that the consent of a victim of human trafficking to the intended exploitation shall be irrelevant if such a consent was received by means of violence, deception, of a position of vulnerability of a person, or other means indicated in the definition of trafficking in human beings.

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In conclusion, it can be stated that combating trafficking in human beings undoubtedly results in a variety of specific challenges as well as problematic issues, which will never be fully resolved, however, it is very important to not stop looking for new forms of this combat, to keep sharing the experiences and observations of various countries in this area, just like we are doing today, in this conference, so that the number of victims in this criminal offense is reduced to the minimum and the existing victims feel proper support and receive the necessary assistance.

Laima Garneliene  
Judge of the Court of Appeal  
of Lithuania  
30 May, 2013, Tallinn

