

HUMAN TRAFFICKING AND THE PECULIARITY'S OF ITS CRIMINAL LEGAL EVALUATION

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***Annotation.** "Human trafficking is a human rights violation and a crime of human dignity and integrity, which could lead to the victims of slavery." One of the most dangerous human rights violations threatened the international community today is the phenomenon of human trafficking. Trafficking in human beings is directly related to migration, organized crime, prostitution, security, jobs, and health. Every year, millions of people, mostly women and children from less developed countries are exploited. They just become an international criminal industry objects outside of their huge profits. In the Lithuania is no established case law dealing with this kind of criminal proceedings. Generally Courts lasts for several years and sometimes longer. In such cases person is traumatized, first of all given assistance for him and deliberately waiting when the victim is will be able to talk about unpleasant things. That is why often cases that occurred in the past are investigated. In the Pre-trial stage the victim often under pressure and receive threats from the accused accomplices. Since the victims testifying in court, the protection system in Lithuania is very weak, frightened victims often changed testimony, withdraws the statements. Thus, persons having committed criminal acts remain unpunished.*

***Keywords:** trafficking in human beings, victim of trafficking in human beings, violation of personal freedom.*

Introduction

One of the most serious human rights challenges facing the international community today is the phenomenon of human trafficking and the host of problems it represents: migration, organized crime, prostitution, security, labor, and health. The sheer scope of the scourge almost defies description. Every year millions of individuals – the overwhelming majority women and children from less developed countries are tricked, sold, forced or otherwise coerced into situations of

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exploitation. They become the commodities of a transnational industry which generates billions of dollars and almost without exception, operates with impunity and occasionally with official complicity. More than 80 percent are women and girls, and 70 percent of them were forced into sexual servitude. One third of all girls are subject to coercive sexual relations, one fifth are victims of forced marriages and close to a million were infected last year with HIV³. Human trafficking not only causes human rights violations – it is itself the result of widespread poverty, discrimination and social exclusion, which undermine dignity and deny enjoyment of human rights, ruining the lives of a significant number of women, men and children throughout the world⁴.

Trafficking in Persons is something of a euphemism. Like many catch-all phrases that minimizes or conceals complex problems, the term itself falls short of any obvious definition. Trafficking in persons is the exploitation of human beings, a form of commerce in which the only value of an individual is measured by the price he or she can be sold for, like soybeans, livestock or oil futures. This commerce violates every moral principle that governs our societies⁵.

Still, trafficking exists in almost every society with vulnerable populations. Victims are typically women and children. These people may be economic migrants, political asylum seekers, those rendered homeless or jobless after natural disasters or civil conflict or individuals looking for a better way of life. Often traffickers are successful taking advantage of these vulnerable individuals by linking this trade with other transnational crimes such as trafficking in arms, drugs and other contraband activities. This cooperation provides them with safe and tested routes, access to cash and known corrupt officials to bribe. Many times they trick their victims into traveling to another country, where they are promised a better life. According to data by United Nations, organized trafficking in people and organized prostitution are two of the seventeen most dangerous transnational organized crimes, which provide criminals with more than 300 percent profit.

Trafficking in human beings remains a serious crime and is an abuse of an individual's human rights. It is the exploitation of vulnerable individuals by criminals who deal with people as commodities to be traded for the sole purpose of financial gain. Whilst reporting on the issue of how much profit is made by the criminals involved in trafficking in human beings is highly subjective, it is universally accepted that it is a multi million euro/dollar a year business.

Trafficking in women is an illegitimate side of the global migration business with a complex intrinsic structure. Three stages in this migration business could be singled out: the mobilization and recruitment of migrants; their movement en route; and their insertion and integration into markets and host societies of the destination countries. To understand the problems of trafficking in women, one must evaluate all three interrelated processes in order to reveal their dimensions and concrete forms of manifestation. In Lithuania, trafficking in women manifests itself at all three levels. Lithuanian women are trafficked to other countries and forced into prostitution upon arriving. Women from neighboring countries are brought to Lithuania for the same purpose, and locally, women are engaged in prostitution as well.

As different sources suggest, while the number of legal migration possibilities decline, the flows of illegal migration increase in most European countries, and this is a perfect environment for the trafficking in human beings to evolve. An increasing number of migrants are using services of illegal organizations. Hence migrants become a prosperous international business, involving several

³ Frattini F. *Speech in conference on Human Trafficking*. Brussels, 19 October 2005.

⁴ Ramcharan B.G. Human Rights and Human Trafficking. Trafficking: Networks and Logistics of Transnational Crime and International Terrorism. Proceedings of International Conference on „*Trafficking: Networks and Logistics of Transnational Crime and International Terrorism*“. Courmayeur, Mont Blanc, Italy. 6-8 December 2002, P. 162.

⁵ Ely-Raphel N. Trafficking in Human Beings. Trafficking: Networks and Logistics of Transnational Crime and International Terrorism. Proceedings of International Conference on „*Trafficking: Networks and Logistics of Transnational Crime and International Terrorism*“. Courmayeur Mont Blanc, Italy. 6-8 December 2002, P. 173.

post-Soviet states, including Lithuania⁶. Trafficking in migrants includes shipping operations planning, information gathering, finances and certain technical tasks.

The investments (input) into these activities and its result (output) can be described as follows: mainly the investments are done by migrants themselves, and the final goal of the process is the lodging of migrants in the destination place, i.e. their insertion in the market of the destination country, often in the illicit market under slavery conditions⁷. In cases of trafficking in women, the component of insertion into the society is evaded. On the contrary, the girls are normally isolated from any contacts. They become debtors and remain within the sphere of influence of traffickers for a long time under slavery-like conditions. The main reason for trafficking in women is big money. In addition, old patriarchal traditions have an impact on the trade. However, there is another side of the coin. The spread of trafficking in women is stimulated by the developing sex and entertainment industry of well-developed countries where the local workforce cannot or does not want to meet the demand. The process is influenced by both push and pull factors in the country of origin, in this case Lithuania, and in countries of destination, for example the demand for sexual services.

Trafficking is a growth crime. It is highly lucrative and is present in some form or another in all 27 member states. The successive expansions of the European Union, from 15 to 25 member states on 1 May 2004 and then to 27 member states on 1 January 2007, have resulted in an internal land border of about 13,000 km, an external land border of about 11,000 km and a sea border of about 74,000 km. Combine this with the freedom of movement across the European Union offered by the Schengen Convention and the European Union's exposure to organised criminality has never been greater⁸.

In order to combat trafficking in humans both at the international and national level, a clear concept should be worked out regarding the legal attributes constituting such a crime, and what must be proved at a trial. Even to an experienced prosecutor and a judge it not easy to comprehend the essence of the norm that criminalizes the act of selling and buying people. In order to clarify the answer, it is useful to overview the evolution of definitions adopted by different international organizations and forums.

1. Assessment of the human trafficking situation in Lithuania

Of the social problems in Lithuanian, trafficking in women is considered as one of the most complex and least perceived. This latent phenomenon was not discussed much for a long time and only during the previous years, after the scale of problem was recognized, was more attention paid to it. Trafficking in women is a multidimensionality phenomenon, partly related to illegal migration and partly to economic problems; hence it is the result of a variety of economic and social problems; hence it is the result of a variety of economic and social issues. Still the most painful result of the trade is the broken fates, the humiliation, and often unheard calls for help. In order to fight the trade, it is necessary that all the dimensions causing the trade and the result of the trade be given sufficient attention. Trafficking in human beings and prostitution are phenomena that illustrate the vulnerability of the social situation of women. It is often considered the result of the

⁶Bazylevas I., Žekonis R. *Prekybos žmonėmis prevencija ir kontrolė Lietuvoje*. V. 2003. Sipaviciene A. *Prekyba moterimis: problemas, sprendimai, žvilgsnis iš vidaus*. V. 2004, P. 191.

⁷International Migration Organization, Social Research Institute. *Trafficking in women: Problems, Solutions, a Look from inside*. Vilnius. 2004, P. 192.

⁸Trafficking in Human Beings in European Union: a Europol perspective, June 2009. http://www.europol.europa.eu/publications/Serious_Crime_Overviews/Trafficking%20in%20Human%20Beings%20June%202009.pdf

synthesis of stereotypes on the one hand and insufficient ability of women to ensure the means of living for themselves on the other. The fact that these phenomena first of all are the results of the stereotypes that have come into force in the public is revealed when analyzing the problems of trafficking in human beings and prostitution, often the discussion relates only to the prostitution of women, and trafficking in women for sexual services.

As a result of the breakup of the Soviet Union in 1991 and the economic hardships that followed, many Lithuanians have been forced to turn to prostitution and to working abroad. The transition to a market economy in Lithuania has left women with restricted job opportunities, which contributes to the increase in the commercial sexual exploitation of Lithuanian women. In addition, the Baltic Sea region functions as a corridor for undocumented migrants towards western Europe and elsewhere, through the territories of the present Russia, Ukraine, Belarus, Poland, Hungary, the Balkans, and the countries of southern Caucasus. The Baltic States are situated in the north-western borders of that corridor zone. The most southern of the Baltic republics, Lithuania has been the most exposed of the three, being used a transit country for undocumented migration. Lithuania is also a country of origin for trafficking of women⁹. Lithuanian women follow Russian women, who are third-largest group of trafficked women in the world. A quarter of the women assisted by the International Organization of Migration (IOM) in Bonn, Germany, were Lithuanian. The trend is confirmed by the statistics of the German Federal Criminal Police. In 1999, the German police apprehended eighty-eight Lithuanian trafficked women, which was up 4,5 percent from previous year, and 11,5 percent of all trafficked women listed by the German police that year, and giving fourth place after the much more populous Ukraine 21,7 percent, Poland 14,4 percent and Russia 11,4 percent¹⁰. The Baltic States is one of the main recruiting grounds for Europe's underground sex industry. The magnitude of the problem resulted in a public-awareness campaign for the prevention of trafficking of women in the Baltic region being launched in Vilnius in 1999. In Lithuania trafficking in people is determined by social and economical conditions. Poverty, unemployment, lack of education and information are conditions under which trafficking in people occurs and spreads. In addition, the size of the prostitution market, the lack of legal harmonization, including the difficult question of whether to legalize or decriminalize prostitution, in combination with migration and business contacts in foreign countries also influence for the process of trafficking in people. A number of factors related to the post-Communist transition in the Baltic States, and therefore specific to the region, do have an impact on the level of migration to and from the region. Of foremost importance is the ethnic composition of the population in the region. The ethnic composition is influenced by the Soviet policy of ethnic mixing and promotion of Russian-speaking persons to high professional positions, and in some cases to entire occupations everywhere in the former Soviet Union. As a result, at the onset of the transition the share of internal immigrants in the population of all three countries was very high. After the break-up of Soviet Union and the setting up of national boundaries between the former republics, this created a potential for at least two strong flows of people: return migration of persons originating from other parts of the former Soviet Union, and further inflow of relatives of the former immigrants¹¹. The other factor of relevance is the economic, cultural and geopolitical status of the Baltic States vis-à-vis the other former Soviet republics. For example, market oriented reforms went deeper in the Baltic Sea region compared to reforms in post-Soviet states outside the Baltic region. In addition,

⁹ International Organization for Migration (2001) untitled article, Trafficking in Migrants, Quarterly Bulletin, April No. 23. Available online at <http://www.msu.edu/harris23/crimjust/human.htm>

¹⁰ Trafficking in human beings. Situation report 1999. Federal Criminal Police Office (BKA) Wiesbaden. Germany and advance information from 2000 report.

¹¹ Tureikytė D., Sipavičienė A. "Trafficking in women in Lithuania: Magnitude, Mechanism and Actors", in Trafficking in women and prostitution in the Baltic States: Social and Legal aspects. Helsinki, 2001, P.284.

the economic stability, including consumer goods market equilibrium, was greater in the Baltic States, and in general on the level of living was higher. Lithuania started to enjoy a satisfactory degree of democratization, social order and political stability relatively quickly. During the transition period, the Lithuania themselves, on the one hand, have been a subject to the austerities, increased stratification, unemployment and eventually the rise of poverty, yet on the other hand, Lithuania embarked on the path of accelerated catching up with Western lifestyles and consumption patterns. This generated increased social, occupational, and territorial mobility, including mass traveling abroad for petty trade and ultimately, migration for work.

Trafficking in people is a latent crime, and not every victim applies for help. That is why we have no exact information about scale of trafficking in people. In Lithuania, over 50 percent of pre-trial investigations of human trafficking have been initiated not subject to a declaration of the aggrieved party, but rather on the initiative of the police in carrying out operational actions. According to data provided by Europol, 120 000 people suffer from trafficking in Europe. Every year, 3000 women from three Baltic States are taken away under compulsion or on their free will. Most of them, approximately 1000 to 1200 come from Lithuania, partly because the Lithuanian population is larger than the rest of the Baltic States and partly, because the geographical location of the country.¹²

In Lithuania, both transnational and national trafficking in people is mostly for the purpose of sexual services. An analysis of the initiated pre-trial-investigations related to trafficking in people in Lithuania, , shows, that most of the cases are concerned with women being exported to foreign countries for sexual abuse or for engaging in prostitution. Women are exported to, for example, Germany, Spain, Italy, Denmark, Norway, Holland, Great Britain, France, Switzerland, Belgium, Greece, Czech Republic, and Poland. The extensive trade with women to Poland is explained by Poland being a distinctive transit point. Germany also serves as a transit country, as do Italy, Spain, and Turkey. Lately a route from Lithuania to the United Kingdom via Ireland has been discovered. Ireland's booming economy and the accessibility of work visas have made access to the country increasingly easy. Therefore, traffickers have begun to use Ireland as a transit point for Lithuanian women on their way to the United Kingdom. Consequently, Irish and British immigration officials have seen a dramatic increase in the number of Lithuanian women deported for illegal entry.¹³

Many women from Eastern countries come to Lithuania without any force. Fifteen percent of all prostitutes who work in Lithuania come from Belarus, Russia and Ukraine. According to the data of Ministry of Interior, illegal profit received only from prostitution business reaches more than 50 million LT, and the profit from trafficking in people and other criminal actions amounts to 200 to 300 million LT.¹⁴ According to a public opinion poll, carried out during 2002 by the IMO 75,1 percent of Lithuanian respondents stated looking for a job abroad, as a main reason for leaving Lithuania. Of the women 44,6 percent referred to the absence of opportunities in Lithuania as an explanation for migrant.¹⁵ Similar results are provided by the surveys of women that provide sexual services, as well as by surveys revealing the social and demographic characteristics of victims of trafficking: "nearly all the interviewed women, self-employed in the prostitution in Lithuania, have specified that before becoming prostitutes they have been engaged in different activities that have

¹²Bazylevas. I. The perspectives of prepared program "*Prevention and control of trafficking in people and forced prostitution in 2005-2008*". Prevention of trafficking in people in Lithuania: problems and solutions. Vilnius. 2005, P. 27.

¹³Sue R.L. „*There is a new Route to Sexual Slavery in Europe, and it Leads from Former Soviet Union to the Sex Clubs of Soxo*“, Independent, 22 September 2000.

¹⁴Kalašnykas R. Police preventive activities against trafficking in people and cooperation with other institution. Prevention of trafficking in people in Lithuania: problems and solutions. Vilnius, 2005. P. 48.

¹⁵ International Migration Organization, Social Research Institute. *Trafficking in women: problems, solutions, a look from inside*. Vilnius, 2004, P. 193.

been poorly paid, where there are no possibilities of social rise: canteens at the kindergartens, garment factories, have been saleswomen at the bars. Part of the prostitutes engages into prostitution temporarily, when they do not have other work or other source of living”¹⁶.

The absolute majority, approximately percent of the women that were sold abroad, were unemployed or had a very poorly paid job before leaving. In general, trafficking in women is closely interrelated with the prostitution business: the local sex industry and the transnational trade with women are two parts of one phenomenon. Most of the victims are women between twenty-one and thirty years.

At present, the main way to involve Lithuanian women and girls into foreign sex industry is the deceit and promises. Very often girls are offered jobs or babysitters, hotel managers, waitresses in cafes, bars, or maybe domestic or agricultural workers. Those are spheres where migrant labor force is indeed needed, and many people known from mass media or other sources that in fact many Lithuanians are employed within these sectors. One of the most attractive spheres for young people is work in modeling agencies. The salary may also be attractive, however, when abroad the situation changes. The only work offered or compelled is prostitution. Still, another group of girls might be aware that they are going to work as prostitutes. However, those who knew or suspected the fact that they would be offered jobs in sex industry before leaving are also deceived by the promises of “beautiful and funny life, fantastic salaries, and possibilities to see the world”. Most of the girls think they will work as striptease dancers or as so called classical prostitutes when the services are rendered for a couple of customers chosen by the person providing the sexual service. They imagine they can give this job up whenever they might want to and that they will earn a lot of money in a couple of months so that they upon returning home will be able to live a happy life. However, the reality is often totally different. In addition, many women are brought to Western man or a legal employment, like a job in the catering business. During the trip these women often are grossly abused. Passports or identity cards are taken away and after their arrival these women are strictly limited in their movement. Unworthy work and living conditions is no exception. After a few weeks or months these women are often sold to the owner of a club or brothel.

Nobody asks for the consent or opinion of the girl and at the moment of sale a victim is not even aware of what is actually going on. Another method is indirect, when girls are plunged into huge debts, usually alleged. It seems that everything is happening with the consent or awareness of the girl, only the dire consequences were not expected. It seems that the girl went abroad on her own request and as many people in Lithuania still say, “she got what she wanted”. Even the victims often blame only themselves and not the organizers of the trafficking. It is therefore extremely important to keep in mind that traffickers use not only physical but also psychological violence, isolation, financial and emotional dependence, as well as the victims fear, self blame, and shame in order to control the victims.

The Government of Lithuania fully complies with the minimum standards for the elimination of trafficking. In 2008, the government increased victim assistance funding to \$150,000, demonstrated strong law enforcement efforts, and increased the number of victims referred by law enforcement personnel for assistance. It also ensured that a majority of convicted traffickers served significant time in prison.¹⁷

2. Legal aspects of Human Trafficking

¹⁶ International Migration Organization, Social Research Institute. *Trafficking in women: problems, solutions, a look from inside*. Vilnius, 2004. P. 37.

¹⁷ Trafficking in Persons Report 2009. <http://www.state.gov/g/tip/rls/tiprpt/2009/123137.htm>

Although Lithuania is among countries that are often mentioned in trafficking in human beings context, trafficking in children is not as widespread in Lithuania. It is mainly related to trafficking in young women and underage girls (16-17 years old) for prostitution purposes.

Article 21 of the Constitution of The Republic of Lithuania declares that “the human person shall be inviolable”. This constitutional norm is one of the fundamental individual rights to be protected the constitution and secondary legislation. Inviolability of the person constitutes the basis for several rights and legal principles, the realization of which is related to work, health protection and other aspects. Every human person must be protected from illegal physical or psychological influence, which means that a system of legal norms should be created, which guarantees that a person will be protected from any illegal external influence on his or her life, health, sexual self-determination, and freedom of physical activity. The inviolability of humans is related to a complex of corresponding legal and other measures, which should protect a human being from threat to his or her psychological and spiritual state.¹⁸

Currently, the Lithuanian legislative acts of relevance for fighting human trafficking essentially correspond to relevant international law. Nevertheless, despite the Lithuanian criminal world being very active in trafficking in humans, the police are not yet able to disclose such crimes effectively enough and put the offenders on trial.

A small number of cases of trafficking in persons per year have been officially registered, and a large part of them have a little legal prospect. These numbers reflect only a small part of criminal transactions involving trade in human beings. According to the Lithuanian Ministry of Interior, the following major reasons and problems hinder the effective and operative interrogation of trafficking cases and hence block them being submitted to courts:

- Some of the victims know in advance that they will get involved in prostitution abroad and they do not object to it. In such cases, the victims usually refuse their first testimonies: they avoid naming persons who had helped them to go abroad and those whom they have met abroad. In addition, they avoid revealing other significant details of the case stating that they do not remember.

- When trafficking is carried out in a foreign country, the evidence of the sale or purchase of a person is usually complicated because victims often go abroad on their own will, or they know that they might get involved in prostitution, or they are promised a legal work, but actually do not get it.

- Suspects or defendants usually deny their guilt and their involvement in trafficking by stating that victims have been brought abroad for legal employment or that they simply were travelling together. Victims, who usually do not know well the foreign country and its language, often change their places of work and their masters. Often do not know or do not remember names of places, names and surnames of employers, and other significant circumstances.

- During the investigation, it sometimes becomes clear that victims have appealed to legal institutions only with the intention to frightening or blackmailing the persons who had transported them because of, for example, unpaid or smaller payments than had been promised and due poor living conditions. In such cases the victims hold back their circumstances of travelling abroad.

- The investigators lack experience in how to carry out investigations of trafficking crimes, which sometimes means that victims are not interrogated properly and thoroughly during the first interrogation, other necessary investigation activities are not always applied on them, which gives an opportunity to change testimonies, and if victims go abroad repeatedly, it becomes impossible to carry out further investigation activities.

¹⁸Pavilionis V. Comment on the II Chapter of the Constitution “*The Human Being and the State*”, ISSN 1392-1592. Teises problemos, 1999, No. 1-2, P. 51-52.

- Insufficient or nonoperative communication with legal institutions of foreign countries do make it difficult to investigate transnational crimes and hence to initiate legal proceedings.¹⁹

Criminal statistics for 1999-2006 years under the former Criminal Code of the Republic of Lithuania (article 131³) and Article 147 of the current Criminal Code are as follows²⁰:

Year	Cases	Cases passed to court	Cases finally solved by courts	Suspended cases	Terminated cases	Persons passing in the law enforcement mind	Suspected persons in trafficking cases	Victims known to the law enforcement	Victims in trafficking cases	Convicted persons
1999	3	1	1			2	2	2		2
2000	5	3	3			7	3	2		3
2001	19	6	3	2	2	52	18	37	9	7
2002	17	10	3	1		58	26	23	16	6
2003	18	5	2	1		40	33	28	7	2
2004	22	13	4	–	1	41	25	31	23	14
2005	32	18	7	1	3	43	21	35	25	15
2006	26	21	7	3	3	33	19	28	27	10
2007	18	4	3		2		3	56	11	6
2008	18	10	7		7		22	102	25	13

Human trafficking is a latent crime and this not fully reflected in the official statistics. 2007 year in the Lithuania was registered 63 cases in trafficking in human beings (18 of them was registered trafficking of child's). In 2006 year – was registered 29 cases of human trafficking. In 2007 year were registered 8 cases in trafficking of human beings²¹. According to data by Criminal Police Bureau Organized Crime investigation service, in first half-year of 2007 and 2008 in Lithuania was started 30 trafficking investigations. Human trafficking refers both to the international as well to the internal trade. In 2007 for the first time the Lithuanian authorities initiated 3 investigations due to exported or imported persons to the Lithuania for the forced labor. The other part of offences was related with the exploitation of women to the prostitution. In 2008 IOM Vilnius office and non-governmental organizations provided assistance to 86 victims of trafficking. In 2007, these victims were 56th overall, during the last four years, IOM Vilnius Office and other aid organizations have helped 429 victims of trafficking. It is estimated that this represents less than 10 percent of the actual cases of trafficking. 46 percent of the victims are 17-23 years old girls. Older than 27 years, make up only 5 percent. Even 21 percent of the victims - are minors. This figure includes not only prostitution, but also pornography crimes, in which involved teenage.

Generally victims of trafficking are divided into two groups. For the purposes of prostitution, women go abroad on their own will. Unfortunately, they do not realize under what bad conditions they are going to work and how they will be exploited. Human traffickers rarely take the risk of transporting women by force, since a victim may disclose their intentions at the border or in the destination country.²² The main countries in which transported the girls remains the same: Great Britain, Holland, Germany, Spain, Italy, and France.

Mitigating factors of trafficking in human beings are: a large number of emigrant's communities in Western Europe; development infrastructure of transportation and technology. In

¹⁹ Bazylevas I., Žekonis R. *Prekybos žmonėmis prevencija ir kontrolė Lietuvoje*. V., 2003.

²⁰ VRM 2007 m. duomenys.

²¹ Burokas Z., Vaitekūnas E. *Lietuvos Respublikos generalinės prokuratūros apibendrinimas „Apie 2007 metais atliktus ikiteisminius tyrimus dėl prekybos žmonėmis“*. 2008 m. Kovo 13 d.

²² Situation of Trafficking in Human Beings in Lithuania. *Summary Report 2006*. V., 2007. P.11.

cyberspace carried out more human trafficking and prostitution functions; well opportunities to use false documents facilitates the execution of the offence.

3. Some peculiarities of the qualification of Human Trafficking in Lithuanian case law

The law enforcement authorities have enough facts that women and girls are involved in trafficking network, but to start the investigation according the article 147 is extremely difficult, because lacking the evidence. A survey of the investigations shows that traffickers usually apply nonviolent modes of recruiting girls for prostitution with a purpose to transfer them to and sell them abroad. In many cases, women pose as recruiters. As a main rule, traffickers are not interested in kidnapping girls or recruiting girls from well-of families. The risk is considered too high. Instead, they focus on young women from asocial families, mostly from the countryside. To a person with this background, a promise of high payment and good clothes often looks like a real prospect to improve his or her life situation. In all of the investigated cases the victims were informed about future engagements and rules: how much they will be paid, how much they will pay to the owner for rent and for clearing the debt. In some cases they were even informed about the system of punishment for pretermission of duty. Even in the cases where the police succeed to get evidence of illegal transactions, prosecutors and judges encounter legal difficulties to justify criminal charges for human trafficking due to the lack of evidence of violence, since according to the traditional theory of criminal law, crimes against the person presuppose an element of coercion or force. In many cases, trafficking in human beings was disclosed applying a criminal act imitation model or upon detention of young women trafficked at the border post.

Lithuania prohibits all forms of trafficking through Article 147 of its criminal code, which prescribes penalties ranging from probation to 15 years' imprisonment. These penalties are sufficiently stringent and commensurate with penalties prescribed for other grave crimes, such as rape.

Trafficking in human's beings is a separate crime according to the Criminal Code of the Republic of Lithuania. It is included in the Chapter XX, which is devoted to "Crimes against human freedom." Trafficking in human's beings is defined in article 147 of the Criminal Code²³:

Those who sold, bought or otherwise transferred or acquired person, or any recruitment, transportation or kept in captivity for a human using physical violence or threats, or otherwise depriving the opportunity to resist, or using the victim's dependence or vulnerability, or using deception, or paying money or providing other pecuniary benefit to the person who actually controls the victim, if the perpetrator knew or intended that the injured person should be engaged in prostitution, or to profiting of that person prostitution, or it would be exploitative to pornography or forced labor, punishable by imprisonment from two to ten years. Those, who committed the offence provided in paragraph 1 for two or more victims, or participating in organized group, or to acquire the victim's organs, tissues or cells, punishable by imprisonment from four to twelve years. According article 147 chapter 3 for trafficking in human beings is responsible the legal person as

²³ The exploitation of forced labor is treated as a separate crime and it is dealt with Article 147¹ of the Criminal Code; The sale or purchase of a child is treated as separate crime and it is dealt with Article 157 of the Criminal Code; Article 307 of the Criminal Code provides for criminal liability for persons profiting from prostitution of another person, while involving a person in prostitution is criminalized under Article 308. The Criminal Code also provides for criminal liability for the smuggling of human beings across the state border – Article 292; Organization of trips of Lithuanian nationals abroad for the purpose of staying there illegally or leaving them without any help in foreign country – Article 293; Exploitation of children for pornography – Article 162, and other acts closely related to trafficking in human beings.

well²⁴. The cases analysis of trafficking in human beings according the article 147 in Criminal Code, shows, that this cases must match three requirements: if it was benefited from human forced labor; if physical or psychological influence on human was used and if the perpetrator knew in advance for that purpose sending people. It is the most difficult to proof the last feature – subjective feature. So, that way the crimes of human trafficking are requalified to less dangerous crimes – fraud or for persons profiting from the prostitution of another person, while involving a person in prostitution.

The norm of trafficking in human beings was included into Criminal Code of the Republic of Lithuania in 2 July 1998. The last edit of the norm of trafficking in human beings (Article 147 in Criminal Code) was adopted on 23 June 2005. The content of the norm of trafficking in human beings was determinate by the commitments of Republic of Lithuania to international and European Union law acts. Such corrections and additions made on 23 June 2005. It was more difficult to qualify the crime under article 147. Because of additional objective features were included in *corpus delicti* of the crime. For that reason the new version of article 147 could consider as liability mitigating law²⁵. On the other hand, the evaluation of the objective features described in the article 147, raises the question of the contraction limits of the criminalization of that acts. Without the violation of personal freedom perspective, it is necessary to establish at least one of the five activity options: sale or other disposal of human; buying or other acquiring; recruitment; transportation; keeping in captivity. Also is necessary to identify at least one of seven alternatives of *modus operandi*: physical violence; threats; any other means rendering the victim unable to resist; using the victim's dependence; using the victim's vulnerability; deception; or paying money or providing other pecuniary benefit to the person who actually controls the victim. Under article 147 is possible to reveal the view of the person to the fact that he was sold, bought or otherwise transferred, or acquired.

To prove the fact of trafficking in human beings it is necessary to prove a violation of personal freedom in order for the Article to be applicable. The main problem and challenge is to find the borderline between illegal transactions that violates the individual freedom on the one hand, and free-will agreements between two persons, where one of them gives the consent to be exploited. On the other, it is quite difficult to determine where the free-will agreement between adult persons develops into repressive exploitation. In most of the cases, victims give their consent to be enslaved; in some of cases they themselves look for a person, who could help to find a place in a prostitution network abroad. Many practicing lawyers do not comprehend the context of trafficking in human beings. There is a risk that in the Lithuanian legal practice the legal notion of trafficking in humans will be perverted by defense arguments substantiating the free-will between adult persons²⁶.

Conclusions

After the dissolution of the Soviet Union, one of the most urgent problems in Lithuania, i.e. unemployment, affected women negatively, and especially those raising children. After 1990, Lithuania experienced an unprecedented growth of the sex and entertainment industry. Such growth may be conducive to an increased probability of women being trafficked. The lack of economic

²⁴ Lietuvos Respublikos baudžiamasis kodeksas. Patvirtintas 200 m. rugsėjo 26 d. įstatymu Nr.VIII-1968, įsigaliojęs 2003 m. gegužės 1 d.

²⁵ Lietuvos Aukščiausiojo Teismo kasacinė nutartis baudžiamojoje byloje Nr. 2K-332/2006.

²⁶ Fedosiuk O. Combating Trafficking in Human Beings in Lithuania: *Criminal Law and Judicial Practice. First year in the European Union: Current legal issues*. Riga, 2005. P. 387.

opportunity in Lithuania led women to migrate, making them vulnerable to trafficking. Other factors were the existence of organized crime and the geographical position of the Baltic states, which lie at the crossroads between western Europe and the former Soviet Union. It should be noted that the level of trafficking in people does not decrease, despite efforts on behalf of government agencies, and nongovernmental and international organizations.

Trafficking is a complex issue, and efforts to address it should take into account the different political contexts and the geographical dimensions of the problem; the ideological and conceptual differences in different countries; the mobility and adaptability of traffickers; the different situations and needs of trafficked persons; the still inadequate, but comprehensive legal framework; and the insufficient research and coordination on the part of the actors involved both at the national and international levels.

Trading in persons still exists, because soon few people are punished for it. The number of cases against traffickers in Lithuania is still relatively small. It is quite seldom that women, who managed to escape, dare to appeal to court. They are ashamed of what happened to them, and they are frequently frightened and threatened. It takes a long time for the case to be investigated by the courts, and the traffickers often manage to get away. Taken together, those who engage in trading in women and trafficking feel that they can evade criminal liability.

In order to combat trafficking in humans both at the international and national level, a clear concept should be worked out regarding the legal attributes constituting such a crime and what must be proved a trial. Even to an experienced prosecutor and judge it not easy to comprehend the essence of the norm that criminalizes the act of selling and buying people.

Trafficking in human beings as a crime has now entered the texts of many national legislations as a consequence of international agreements and conventions. The long way to the harmonization of definitions has started, even if not concluded. There remains the enormous difficulty of implementing it under very different conditions. If trafficking in human beings is a rewarding business for organized crime groups, it is also the vehicle for many desperate people to leave low social and economic conditions for something they believe to be better. This means that the implementation of these laws needs to take into account the punishing factors the create opportunities for this crime. It is possible that this crime may be considered a crime against the humanity in the future, but this will not solve the problem. The real issue today is to understand the phenomenon in order to find appropriate remedies. This is the rationale of its measurement.

References

1. Bazylevas I., Žekonis R. Prekybos žmonėmis prevencija ir kontrolė Lietuvoje. V., 2003.
2. Sipavičienė A. Prekyba moterimis: problemos, sprendimai, žvilgsnis iš vidaus. V., 2004.
3. Bazylevas. I. The perspectives of prepared program "Prevention and control of trafficking in people and forced prostitution in 2005-2008". Prevention of trafficking in people in Lithuania: problems and solutions. Vilnius. 2005.
4. Burokas Z., Vaitekūnas E. Lietuvos Respublikos generalinės prokuratūros apibendrinimas „Apie 2007 metais atliktus ikiteisminius tyrimus dėl prekybos žmonėmis“. 2008 m. Kovo 13 d.
5. Ely-Raphel N. Trafficking in Human Beings. Trafficking: Networks and Logistics of Transnational Crime and International Terrorism. Proceedings of International Conference on „Trafficking: Networks and Logistics of Transnational Crime and International Terrorism“. Courmayeur Mont Blanc, Italy. 6-8 December 2002.
6. Frattini F. Speech in conference on Human Trafficking. Brussels, 19 October 2005.

7. International Migration Organization, Social Research Institute. Trafficking in women: Problems, Solutions, a Look from inside. Vilnius, 2004.
8. International Organization for Migration (2001) untitled article, Trafficking in Migrants, Quarterly Bulletin, April No. 23. Available online at <http://www.msu.edu/harris23/crimjust/human.htm>
9. Kalašnykas R. Police preventive activities against trafficking in people and cooperation with other institution. Prevention of trafficking in people in Lithuania: problems and solutions. Vilnius, 2005.
10. Lietuvos Aukščiausiojo Teismo kasacinė nutartis baudžiamojoje byloje Nr. 2K-332/2006.
11. Lietuvos Respublikos baudžiamasis kodeksas. Patvirtintas 200 m. rugsėjo 26 d. įstatymu Nr.VIII-1968, įsigaliojęs 2003 m. gegužės 1 d.
12. Ramcharan B.G. Human Rights and Human Trafficking. Trafficking: Networks and Logistics of Transnational Crime and International Terrorism. Proceedings of International Conference on „Trafficking: Networks and Logistics of Transnational Crime and International Terrorism“. Courmayeur, Mont Blanc, Italy. 6-8 December 2002.
13. Trafficking in Human Beings in European Union: a Europol perspective, June 2009. http://www.europol.europa.eu/publications/Serious_Crime_Overviews/Trafficking%20in%20Human%20Beings%20June%202009.pdf
14. Trafficking in human beings. Situation report 1999. Federal Criminal Police Office (BKA) Wiesbaden. Germany and advance information from 2000 report.
15. Tureikytė D., Sipavičienė A. “Trafficking in women in Lithuania: Magnitude, Mechanism and Actors”, in Trafficking in women and prostitution in the Baltic States: Social and Legal aspects. Helsinki, 2001.
16. Situation of Trafficking in Human Beings in Lithuania. Summary Report 2006. V., 2007
17. Trafficking in Persons Report 2009. <http://www.state.gov/g/tip/rls/tiprpt/2009/123137.htm>