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HUMAN TRAFFICKING AND ITS TREATMENT IN CRIMINAL LAW

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Annotation. *Human trafficking is a human rights violation and a crime of human dignity and integrity, which may lead to the enslavement of victims. One of the most dangerous human rights violations threatening 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 risks. Every year, millions of people—mostly women and children from less developed countries—are exploited. They become objects of an international criminal industry. In Lithuania, there is no established case law dealing with criminal proceedings for cases of human trafficking. Generally, legal proceedings last for several years. In such cases when a person is traumatized, he/she requires assistance and time until the victim is able to talk about the experiences. That is why prosecutors tend to investigate cases that occurred in the past. In the pre-trial stage, the victim is often under pressure and receives threats from accomplices of the accused. Since the victims' protection system in Lithuania is very weak, frightened victims often change testimony and withdraw their statements. Thus, criminals remain unpunished.*

Keywords: *human trafficking, victims of human trafficking, 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, labour, and health risks. The sheer scope of this 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 exploitation. They become the commodities of a transnational industry that 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 are forced into sexual servitude. One third of all girls are subjected to coercive sexual relations, and one fifth are victims of forced marriages. Last year alone, close to a million were infected with the Human Immunodeficiency Virus (HIV).¹ Not only is human trafficking a cause of human rights violations. It is in 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 world.²

“Human trafficking” is something of a euphemism. Like many catch-all phrases that reduce or conceal complex problems, the term falls short of any clear definition. Trafficking in persons is the exploitation of human beings, a form of commerce wherein an individual’s value is measured solely by the price he or she can be sold for, like soy beans, livestock or oil futures. This commerce violates every moral principle that governs our society.³

Nevertheless, 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 simply looking for a better way of life. Often traffickers are successful in taking advantage of these vulnerable individuals by linking this activity to other transnational crimes such as trafficking in arms, drugs and other contraband. This cooperation provides them with safe and tested routes, access to cash and corrupt officials. They usually trick their victims into travelling to another country by promising them a better life. According to data by the 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.

1 Frattini, F. *Speech at Conference on Human Trafficking*. Brussels, 19 October 2005.

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

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

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. Although reporting on the profits made by criminals involved in human trafficking is highly subjective, most sources agree that it is a multi-million dollar business.

Trafficking in women is an illegitimate side of the global migration business with an intrinsically complex structure. Three stages in this migration business can be singled out: the recruitment and mobilization 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 to reveal their dimensions and concrete forms of manifestation. In Lithuania, trafficking in women manifests itself at all three levels. Lithuanian women are taken to other countries and forced into prostitution upon arriving, women from neighbouring countries are brought to Lithuania for the same purpose, and local women are engaged in prostitution as well.

Different sources suggest that as the possibilities for legal migration into European countries decrease, the flow of illegal migration increases, creating a perfect environment for trafficking in human beings. An increasing number of migrants come to use the services of illegal organizations. Hence, migration has become a profitable international business in several post-Soviet states, including Lithuania.⁴ 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: the investments are mainly brought in by the migrants themselves, and the final goal of the process is the placement of migrants at the place of destination, i.e., their insertion into the market of the destination country, often in the illicit sector under conditions of slavery.⁵ In the trafficking of women, the practice of inserting them into the society is largely avoided. On the contrary, girls are usually isolated from any contact with society. They become debtors and remain under the influence of traffickers for a long time under conditions akin to slavery. The main reason for trafficking in women is enormous profit. Persisting patriarchal traditions also contribute to this practice. However, there is another side to this coin. The spread of trafficking in women is stimulated by a developing sex and entertainment industry in well-developed countries where the local workforce cannot or does not want to meet the demand. The process is influenced by both, push factors in the country of origin, in this case Lithuania, and pull factors in the country of destination.

4 Bazylevas, I.; Žekonis, R. *Prekybos žmonėmis prevencija ir kontrolė Lietuvoje* [Bazylevas, I.; Žekonis, R. Prevention and Control of Human Trafficking in Lithuania]. Vilnius, 2003; Sipavičienė, A. *Prekyba moterimis: problemos, sprendimai, žvilgsnis iš vidaus* [Sipavičienė, A. Trafficking in Women: Problems, Solutions, a Look from the Inside]. Vilnius, 2004, p. 191.

5 International Migration Organization, Social Research Institute. *Trafficking in Women: Problems, Solutions, a Look from Inside*. Vilnius. 2004, p. 192.

Trafficking is a growing crime. It is highly lucrative and is present in some form or another in all 27 European Union member states. The expansion of the European Union, from 15 to 25 member states on 1 May 2004 and then to 27 member states on 1 January 2007, has 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 this results in exposure to organised crime greater than ever before.⁶

To combat human trafficking on both the international and the national level, there is a need for a clear understanding of what legal attributes constitute such a crime, and what must be proved at a trial. Even an experienced prosecutor or judge may not easily comprehend the essence of the norm that criminalizes the act of selling and buying people. A clear understanding of this point requires an overview of the evolution of definitions adopted by different international organizations and forums.

The purpose of the article is to assess Lithuanian case Law on the question of human trafficking.

The study focuses on the criminal cases of all Instances of Lithuanian courts that have qualified the crimes therein as trafficking in human beings. The purpose of the study is to identify the way in which trafficking in human beings is applied in the practice of Lithuanian courts and hence evaluate the criminal law. The author discusses not only the problems that such cases entail, but also the positive aspects of the case law.

There is a number of scholarly publications on this topic though lacking in the practical aspect. The author wanted to connect theoretical ideas about human trafficking to examples from Lithuanian case law. Hopefully the article will prove interesting to those concerned with the crimes against freedom.

The author uses the comparative method, document analysis and other methods.

1. Assessment of the Human Trafficking Situation in Lithuania

Of all the social problems faced by Lithuanian society, trafficking in women is one of the most complex and the least understood. This latent phenomenon has not received adequate discussion in the past. Only in the last few years has the scope of the problem been recognized and received more attention. Trafficking in women is a multidimensional phenomenon, partly related to illegal migration and partly to economic problems. It is the result of a variety of economic and social problems. The most painful outcome of this trade is the broken fates, humiliation, and often-unheard calls for help. The fight against this practice requires a greater awareness of all the causes and consequences of this trade. Trafficking in human beings and prostitution are phenomena that illustrate the vulnerability of the social situation of women. The social situation is often seen as a synthesis of prevalent stereotypes and the inability of women to ensure their own liveli-

6 Trafficking in Human Beings in European Union: a Europol perspective [interactive] June 2009 [accessed 2009-10-19]. <http://www.europol.europa.eu/publications/Serious_Crime_Overviews/Trafficking%20in%20Human%20Beings%20June%202009.pdf>.

hood. That these phenomena are the result of socially prevalent stereotypes is revealed in the discourse regarding the problems of trafficking in human beings and prostitution, which often focuses only on the prostitution of women and trafficking in women for sexual services.

The breakup of the Soviet Union in 1991 and the subsequent economic hardships forced many Lithuanians to turn to prostitution and to work abroad. The transition to a free market economy in Lithuania has left women with restricted job opportunities, which in turn contributes to increased commercial sexual exploitation of Lithuanian women. In addition, the Baltic Sea region functions as a corridor for undocumented migrants into western Europe and elsewhere, migrants moving through the territories of Russia, Ukraine, Belarus, Poland, Hungary, the Balkans, and the countries of southern Caucasus. The Baltic States are on the north-western border of this corridor zone. As the southernmost of the three Baltic republics, Lithuania has been the most exposed, and has served as a transit country for undocumented migration. Lithuania is also a country of origin for the trafficking of women.⁷ Lithuanian women are second to Russian women, who are the 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 are Lithuanian. The trend is confirmed by the statistics of the German Federal Criminal Police. In 1999, the German police apprehended 88 trafficked Lithuanian women, which was up by 4.5% from the previous year, and constituted 11.5% of all trafficked women listed by the German police that year. It places Lithuanian women in fourth place, preceded only by the much more populous Ukraine (21.7%), Poland (14.4%), and Russia (11.4%).⁸ The Baltic States are one of the main recruiting grounds for Europe's underground sex industry. The magnitude of the problem has resulted in a public-awareness campaign for the prevention of trafficking in women in the Baltic region launched in Vilnius in 1999. In Lithuania, trafficking in people is driven by social and economic conditions. Poverty, unemployment, lack of education and information are conditions under which trafficking in people occurs and spreads. In addition, the extent 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 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, affect the level of migration to and from the region. Of foremost importance is the ethnic composition of the population in the region. Ethnic composition in the Soviet Union was influenced by the Soviet policy of ethnic mixing and limitations of opportunities for highly professional positions and even limitation of entire occupations to Russian-speaking citizens across the Soviet Union. As a result, at the onset of the transition, the share of internal immigrants in the population of all three Baltic countries was very high. After the break-up of Soviet Union and the setting up of national borders

7 International Organization for Migration (2001) untitled article, *Trafficking in Migrants*, Quarterly Bulletin, [interactive] April No. 23 [accessed 2009-10-20]. <<http://www.msu.edu/harris23/crimjust/human.htm>>.

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

between the former republics, this created a potential for at least two strong trends in the flow of people: return migration of persons originating from other parts of the former Soviet Union, and further inflow of relatives of former immigrants.⁹ Another 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 were deeper in the Baltic Sea region compared to reforms in post-Soviet states outside the Baltic region. There was also greater economic stability, equilibrium in the consumer goods market and generally, a higher standard of living in the Baltic States. Lithuania began enjoying a satisfactory degree of democratization, social order and political stability relatively quickly. During the transition period, the Lithuanians have experienced greater austerity, increased stratification, unemployment and eventually, a rise in poverty as their country embarked on a 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. Thus, we lack exact information on the scale of this activity. In Lithuania, over 50 percent of pre-trial investigations of human trafficking have been initiated not by the aggrieved party, but rather by the police carrying out operational activities. According to data provided by Europol, 120,000 people suffer from trafficking in Europe. Every year, 3,000 women from the three Baltic States are taken abroad with or without the consent of their free will. Most of them, approximately 1,000–1,200 come from Lithuania, partly because Lithuania has a greater population than the other Baltic States and partly, because of the geographical location of the country.¹⁰

In Lithuania, both transnational and national trafficking in people is mostly for the purpose of sexual services. An analysis of 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 Germany, Spain, Italy, Denmark, Norway, Holland, Great Britain, France, Switzerland, Belgium, Greece, Czech Republic, and Poland. The extensive trade of 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 has been discovered from Lithuania to the United Kingdom via Ireland. Ireland's booming economy and accessibility to work visas have made access to the country increasingly easy. Therefore, traffickers have begun using Ireland as a transit point for Lithuanian women on their way to the United Kingdom. Consequently, Irish and British

9 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.

10 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, p. 27.

immigration officials have seen a dramatic increase in the number of Lithuanian women deported for illegal entry.¹¹

Many women from Eastern countries come to Lithuania voluntarily. Fifteen percent of all prostitutes who work in Lithuania come from Belarus, Russia and Ukraine. According to the data by the Ministry of Interior, illegal profit from prostitution business alone amounts to more than 50 million litas, and profit from trafficking in people and other criminal actions—200 to 300 million litas.¹² According to a public opinion poll carried out by the International Migration Organization (IMO) in 2002, 75.1 percent of Lithuanian respondents admitted looking for a job abroad as the main reason for leaving Lithuania. Of the women, 44.6 percent referred to the absence of opportunities in Lithuania as a reason for migrating.¹³ Similar results are revealed in surveys of women providing sexual services, as well as surveys studying the social and demographic characteristics of trafficking victims: “nearly all interviewed women, self-employed in prostitution in Lithuania, have specified that before becoming prostitutes they had engaged in different poorly-paid activities that provided no opportunity for social advancement: kindergarten canteens, textile factories, waiting at bars. Some prostitutes engage in prostitution temporarily, when they do not have other work or other means of livelihood”¹⁴.

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

Currently, the main way to involve Lithuanian women and girls in the foreign sex industry is deceit and false promises. Very often girls are offered jobs as babysitters, hotel managers, waitresses in cafés or bars, or as domestic or agricultural workers. Those are the areas where migrant labour is certainly needed, and it is well known from mass media or other sources that many Lithuanians are employed within these sectors. One of the most attractive areas for young people is work in modelling agencies. The salary may also be attractive, however, upon arrival abroad, the situation changes considerably. The only work offered or compelled is prostitution. Still, certain groups of girls might be aware that they are going to work as prostitutes. Even those who know or suspect the fact that they will be offered jobs in the sex industry before departing are also deceived by the promises of “beautiful and fun life, fantastic salaries, and possibilities to see the world”. Most girls think they will work as striptease dancers or so-called classy prostitutes rendering services to few customers chosen by the person providing the sexual service. They imagine that they will be able to give this job up whenever they choose,

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

12 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, p. 48.

13 *International Migration Organization, Social Research Institute; Trafficking in Women: Problems, Solutions, a Look from Inside*. Vilnius, 2004, p. 193.

14 *Ibid*, p. 37.

that they will earn a lot of money in a couple of months will be able to live a happy life upon returning home. However, the reality is often totally different. During the trip, these women are often grossly abused. Passports or identity cards are taken away and upon arrival, these women are strictly limited in their movement. Degrading work and living conditions is no exception. After a few weeks or months, these women are often sold to an owner of a club or brothel.

Nobody asks for the consent or opinion of the girl, and at the moment of sale, the victim is not even aware of what is actually happening. Another method is indirect, when girls are plunged into huge debts, usually alleged. It may appear that everything is happening with the consent or awareness of the girl and only the dire consequences are unexpected. It may appear that the girl went abroad on her own request and as many people in Lithuania still say, “she got what she deserved”. Even the victims often blame themselves and not the perpetrators of 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 victim’s own fear, guilt, and shame to facilitate control.

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 litas, demonstrated strong law enforcement efforts, and an increased number of victims referred by law enforcement personnel for assistance. It also ensured that a majority of convicted traffickers served significant time in prison.¹⁵

2. Legal Aspects of Human Trafficking

Article 21 of the Constitution of The Republic of Lithuania declares that the human being is inviolable. This constitutional norm is one of the fundamental individual rights to be protected by 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 person must be protected from illegal physical or psychological influence, which requires a system of legal norms that would guarantee the person’s protection from any illegal external influence on his or her life, health, sexual self-determination, and freedom of physical activity. The inviolability of human rights is related to a complex of corresponding legal and other measures, which protect a human being from threat to his or her psychological and spiritual state.¹⁶

Currently, the Lithuanian legislative acts relevant to fighting human trafficking essentially correspond to relevant international laws. Nevertheless, despite the Lithuanian

15 Trafficking in Persons Report 2009. [interactive] [accessed 2009-10-19]. <<http://www.state.gov/g/tip/rls/ti-prpt/2009/123137.htm>>.

16 Pavilionis, V. Comment on the II Chapter of the Constitution “The Human Being and the State”. *Teisės problemos*. 1999, 1(2): 51–52.

criminal world being very active human trafficking, the police are not yet able to disclose such crimes effectively enough and put the offenders on trial.

A small number of human trafficking cases are officially registered every year, and most of them have little legal prospect. These numbers reflect only a small part of the 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 investigation of trafficking cases and hence block them from being submitted to courts:

- Some victims know in advance that they will be involved in prostitution abroad and they do not object to it. In such cases, the victims usually recant their initial testimony: they avoid naming persons who helped them go abroad and those they met abroad. In addition, they avoid revealing other significant details of the case, indicating 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 difficult to confirm 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 job, but actually do not get it.
- Suspects or defendants usually deny their guilt and involvement in trafficking, stating that the victims were taken abroad for legal employment or that they were simply travelling together. Victims, who usually do not adequately know the foreign country and its language, often change their places of work and their employers. They often do not know or do not remember the names of places, names and surnames of employers, and other significant circumstances.
- During investigation, it sometimes becomes clear that victims have appealed to legal institutions only with the intention of frightening or blackmailing the persons who had transported them because of lack in payment, poor living conditions, etc. In such cases, the victims hold back information on the circumstances of travelling abroad.
- The investigators lack experience on how to carry out investigations of trafficking crimes. This sometimes means that victims are not interrogated properly and thoroughly during the initial interrogation, other necessary investigative activities are not always applied, which leads to changed testimonies, and if victims go abroad repeatedly, it becomes impossible to carry out further investigation.
- Inadequate or ineffective communications with legal institutions of other countries make it difficult to investigate transnational crimes and hence initiate legal proceedings.¹⁷

Criminal statistics for 1999–2006 under the former Criminal Code of the Republic of Lithuania (article 131³) and Article 147 of the current Criminal Code are summarized in the table below:

17 Bazylevas, I.; Žekonis, R.

Table 1.

Year	Cases	Cases passed to court	Cases finally solved by courts	Suspended cases	Terminated cases	Persons of interest to law enforcement	Suspects in trafficking cases	Victims known to 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

Data of the Ministry of Interior of the Republic of Lithuania, 2007.

Human trafficking is a latent crime and thus not fully reflected in official statistics. In 2007, there were 63 registered cases of human trafficking in Lithuania (18 of them were registered as trafficking in children). In 2006, there were 29 registered cases of human trafficking. In 2007, there were 8 registered cases in human trafficking.¹⁸ According to the Criminal Police Bureau of Organized Crime investigation service, there were 30 trafficking investigations in 2007 and the first half of 2008 in Lithuania. Human trafficking refers both to the international as well as internal trade. In 2007, for the first time the Lithuanian authorities initiated 3 cases investigating exported or imported persons to Lithuania for the forced labor. The remaining 27 offences were related to the exploitation of women by prostitution. In 2008, the IOM Vilnius office and non-governmental organizations provided assistance to 86 victims of trafficking. During the last four years, the 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 number of trafficking cases. Forty-six percent of the victims are 17-23 year-old girls; 21% are minors. Those older than 27 years of age make up only 5%. This figure includes not only prostitution, but also pornography crimes, where a teenager is involved.

18 Burokas, Z.; Vaitekūnas, E. Lietuvos Respublikos generalinės prokuratūros apibendrinimas „Apie 2007 metais atliktus ikiteisminius tyrimus dėl prekybos žmonėmis“. [Burokas, Z.; Vaitekūnas, E. Summary of the General Prosecutor “on Preliminary Investigations into Human Trafficking in the Year 2007”]. 2008 m. kovo 13 d.

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 how dire the conditions of their work are going to be and how badly 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 country of destination.¹⁹ The main countries of destination remain the same: Great Britain, Holland, Germany, Spain, Italy, and France.

3. The Qualification of Human Trafficking in Lithuanian Case Law

Lithuania prohibits all forms of trafficking based on the Article 147 of its Criminal Code, which prescribes penalties ranging from probation to 15 years of imprisonment. These penalties are sufficiently harsh and commensurate to penalties given for other grave crimes, such as rape.

Law enforcement authorities usually have sufficient information to determine that women and girls are involved in trafficking network. However, it is extremely difficult to begin an investigation according to Article 147, because of the lacking the evidence. A review of past investigations shows that traffickers usually use non-violent means for the recruitment of girls for prostitution with the purpose to transporting and selling them abroad. In many cases, women pose as recruiters. As a rule, traffickers are not interested in kidnapping girls or recruiting girls from well-off families. The risk is considered too high. Instead, they focus on young women from low-income families, mostly from the countryside. A promise of high payment and fancy clothes to a person from such a background often looks like a real prospect to improve his or her life situation. In all of the investigated cases, victims were informed about the future commitments and rules: how much they will be paid, how much they will pay for rent and for clearing the debt. In some cases, they were even informed about the system of punishment for the neglect to perform a duty. According to the traditional theory of criminal law, crimes against the person presuppose an element of coercion or force. Therefore, even when the police succeed in obtaining evidence of illegal transactions, prosecutors and judges encounter legal difficulties in justifying criminal charges for human trafficking due to the lack of evidence of violence or force. In many cases, trafficking in human beings is disclosed applying a criminal act imitation model or upon detention of young women trafficked at the border post.

Trafficking in human beings is a separate crime according to the Criminal Code of the Republic of Lithuania. It is defined in Chapter XX, which is devoted to “Crimes against human freedom.” Trafficking in human beings is defined in Article 147 of the Criminal Code²⁰:

19 Situation of Trafficking in Human Beings in Lithuania. *Summary Report 2006*. Vilnius, 2007, p.11.

20 The exploitation of forced labor is treated as a separate crime and it is dealt with in Article 147¹ of the Criminal Code; The sale or purchase of a child is treated as separate crime and it is dealt with in Article 157 of

Those who sold, bought or otherwise transferred or acquired a person, or any recruited, transported or kept a human being in captivity by means of violence or threats, or otherwise deprived the person of 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 attempted to profit from that person's prostitution, or if that person would be exploited for pornography or forced labor, are punishable by imprisonment from two to ten years. Those, who committed the offence provided in paragraph 1 for two or more victims, or participated in an organized group, or to acquire the victim's organs, tissues or cells, are punishable by imprisonment from four to twelve years. According to Article 147 chapter 3, a legal person may also be responsible for trafficking in human beings.²¹

Case analysis of trafficking in human beings according to article 147 of the Criminal Code shows that cases must meet three requirements: that the offender benefited from the forced human labour; that physical or psychological pressure was used on the person; and that the perpetrator knew in advance what the purpose of transporting people was. The last component is subjective and is the most difficult to prove. Because of this, crimes of human trafficking are often re-qualified to less dangerous crimes, such as fraud or for persons profiting from the prostitution of another person, while involving that person in prostitution.

The norm of trafficking in human beings was introduced into the Criminal Code of the Republic of Lithuania on 2 July 1998. The last edit of the norm of trafficking in human beings (Article 147 of the Criminal Code) was adopted on 23 June 2005. The content of the norm of trafficking in human beings was determinate by the commitments of the Republic of Lithuania to international and European Union legal acts. These corrections and additions made it more difficult to qualify the crime under article 147, because additional objective features were included in the *corpus delicti* of the crime. For this reason, the new version of article 147 can be seen as a liability-mitigating law.²² On the other hand, the evaluation of the objective features described in article 147 raises the question of the statutory limits on the criminalization of these acts. Without a violation of personal freedom, it is necessary to prove at least one of five activities: sale or other disposal of an individual; purchase or other acquisition; recruitment; transportation; keeping in captivity. It is also necessary to identify at least one of seven *modi 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

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.

21 Republic of Lithuania Criminal Code. *Official gazette*. 2000, No. 89-2741.

22 Lietuvos Aukščiausiojo Teismo kasacinė nutartis baudžiamojoje byloje Nr. 2K-332 (2006). [Supreme Court of Lithuania cassation ruling in the criminal case No. 2K-332 (2006)].

or providing other pecuniary benefit to the person who actually controls the victim. Under article 147, it is possible to reveal to the person that he/she was sold, bought or otherwise transferred, or acquired.

3.1. The Recruitment and Trafficking of a Human Being

Recruitment is a typical activity of human trafficking. It may be defined as encouragement (e.g., persuasion, promises, proposals) of a person to take certain actions (e.g., to agree to something, to sign a contract, to go abroad) in order to later abuse that person via control measures restricting his/her freedom. A review of judicial practice indicates that in most cases criminals use non-violent methods of recruitment and do not hide from the targeted women the nature of intended work. During recruitment, perpetrators openly explain to the girls the specifics of their future work and the potential earnings. They also indicate that part of the earned money must be returned to the owner. In cases involving minors, counterfeit identification documents for travelling abroad are produced. In fact, recruitment can be veiled or done openly, without hiding the fact of exploitation. To determine the fact of the crime, the victim's recruitment need not be finalized; it is sufficient to prove the process of recruitment itself. Usually, in trafficking cases, defendants are accused of recruitment of women to travel abroad for prostitution or for offering already recruited women to someone else for export to European Union countries.

*“On 22 April 2002, around 15:30 in the village Vilkyčiai, Šilutė region, R.B. in order to sexually exploit and receive material benefits, sold the minor M.S. (born in 1986) for 100 US dollars and 780 litas to the undercover person V.T. who imitated the crime.”*²³

In this particular case, R. B. offered M. S. a job and directly explained that she will work as a prostitute abroad. M. S. argued that she will not be able to do this job and she is afraid. However, R. B. told her to think about it and mentioned that she would earn around 100 litas per hour. M. S. subsequently agreed to be recruited.

We may accept the position of the O. Fedosiuk that the transportation of women abroad for prostitution is an act contrary to the values of freedom. On the other hand, several legal provisions in the Criminal Code of Lithuania criminalize the profiting from prostitution by another person as well as their involvement into prostitution as a crime against morality. Therefore, the definition of the violation of freedom as divided between opposition to freedom and morals is understandable. As rightly noted by the scholar, inconsistency in laws defining the transnational trafficking of human beings for prostitution with their consent to benefit from prostitution should prompt us to focus more clearly on the opposition to freedom aspect of human trafficking.²⁴

23 Šilutės rajono apylinkės teismo baudžiamoji byla (bylos Nr. 1-290 (2002). [Šilutė region district court, criminal case No. 1-290 (2002)].

24 Fedosiuk, O. Prekybos žmonėmis nusikaltimo normos naujosios redakcijos (2005 m. birželio 23 d.) aiškinimo ir taikymo problemos. [Problems in Elaborating and Implementing the Criminal Norms of Human Trafficking According to the new Edition of the Criminal Code]. *Jurisprudencija*. 2007, 8(98): 58.

Transportation, as a typical characteristic of human trafficking, is any type of transfer of a person from one place to another (by car, escort when travelling by train or airplane, etc.) done with the purpose of exploitation. A person can be transported not only to the place where he/she will be exploited but also to another location—e.g., to show him/her to a potential buyer, for temporary lodging before being transported abroad. For example, in one particular criminal case, courts determined the fact of transportation based on the fact that defendants recruited girls, accommodated and fed them, brought them to hairdressers, shops, bathhouses, and took them to people who could organize their trip abroad, explained the working conditions, wages and purchased tickets for travel.²⁵ In other words, defendants were actively engaged in actions aimed at transporting people from Lithuania abroad for prostitution.

3.2. Agreement for Acquisition and Transfer of a Human Being

Acquisition of a human being (purchase or otherwise) is an agreement with the purpose of exploitation wherein the perpetrator gains control of the victim. It is possible to acquire a person through abduction, recruitment, application of controlling measures or concealment. Transfer of a human being (purchase or otherwise) is an agreement with the purpose of exploitation wherein the perpetrator transfers his control over the victim to another person. For example, a hustler sells a prostitute to another hustler. Analysis of judicial practice shows that stating the facts of selling a human being for the assessment of the value of the transaction has no relevance for the qualification of the criminal act in accordance with Article 147 of the Criminal Code of Lithuania and this factor does not necessarily have to be argued.

In the purchase of girls for their subsequent exploitation in prostitution, buyers and sellers thoroughly ascertain all details—e.g., the nature of the prostitutes' future work, their physical conditions (appearance, weight, etc.), the penalty system, actions in case of disobedience or escape.²⁶

The rule of law in cases of trafficking in human beings concerning alternative criminal acts including a person's acquisition and transfer refers to exercise of illegitimate powers by a perpetrator on behalf of the victim. Methods of committing the criminal act allow for the identification of an opposition to freedom. They also define the threshold separating trafficking in human beings from legal trade, the difference between exploitation and work on free volition.

3.3. Human Trafficking as Infringement of Freedom

Trafficking in human beings can qualify as a crime foreseen in Article 147 of the Criminal Code of Lithuania only if it is ascertained that the person's freedom was infringed. In the absence of such evidence, Article 147 of the Criminal Code of Lithuania

25 Panevėžio miesto apylinkės teismo baudžiamoji byla (bylos Nr. 1-56-17 (2003). Panevėžys city district court, criminal case No. 1-56-17 (2003)].

26 Vilniaus apygardos teismo baudžiamoji byla (bylos Nr. 1-199 (2003). [Vilnius regional court, criminal case No. 1-199 (2003)].

cannot be applied, and criminal liability can be only considered in line with the provisions of Article 307 of the Criminal Code of Lithuania.

The following case is an example where Article 147 could not be applied. In qualifying a criminal act under the requirements of Section 1 of Article 147 of the Criminal Code of Lithuania, it must be noted that the victim's freedom was restricted, affecting her will by at least one of the means foreseen in Article 147 of the Criminal Code of Lithuania (edition 23-06-2005).

*“R. L. and V. P. are accused of the fact that both, acting in concert, with the aim of selling the woman with her consent for prostitution from Lithuania to Israel and hence gaining profit, at end of June 2003 (exact date not established during the pre-trial investigation), prevailed upon the victim A. M. to work in Israel as a prostitute, bought her a ticket and subsequently, on 18-06-2002, transported her by plane from Vilnius airport to Prague, the Czech Republic and after that, from Prague to Ben-Gurion airport in Tel-Aviv, Israel. However, Israeli Customs authorities refused A.M. entry into Israel and she was returned to Lithuania. R. L. and V. P. are accused by the Section 1 of the Article 147 of the Criminal Code of Lithuania”.*²⁷

The defendants did not confess to the indictments. The victim, A. M. certified that she was offered to go to Israel for prostitution and she agreed. One day, a man picked her up and drove her to the airport where another person was waiting. It was explained to her that she will fly to Israel with this man.

The court stated that based on statements in court and during the pre-trial investigation by the victim A. M., she was not sold, bought, appraised or trafficked; nobody held her in captivity using violence or threats or otherwise deprived her of the possibility to resist. There was no allusion to her being sold for prostitution in Israel. The trial and pre-trial investigations did not provide any evidence that the defendants violated A. M.'s freedom. Their actions could not be treated according to Section 1 of Article 147 of the Criminal Code of Lithuania because there was no indication of this crime.

Identification of the means of the criminal act defines a boundary between trafficking in human beings and other legal agreements regarding a person, including exploitation through voluntary labour. It also helps define acts infringing freedom. Article 147 of the Criminal Code of Lithuania defines means of influence in terms of powers used by the suspects to gain control over victims and hence exploit them or use them as objects in commercial dealings. However, a buyer, seller, hirer or transporter need not necessarily use those means. It is enough to know that at least one of these means was or would have been used against the victim.

The mechanism of violating personal freedom in human trafficking is best reflected by the term *“control restricting freedom”*. This term presupposes certain continuous character in the restriction of personal freedom which is essential for exploitation. An

27 Vilniaus apygardos teismo baudžiamoji byla (bylos Nr.1 – 31(2007)). [Vilnius regional court, criminal case No. 1-31(2007)].

agreement to exploit a person is contrary to the victim's personal freedom in the following cases:

- 1) An agreement (to buy or selling) is made regarding an already controlled, fully or partly non-free person.
- 2) An agreement is made regarding a person whose freedom is unrestricted (e.g. in case of recruitment or transportation), however, other circumstances suggest that this person's freedom will subsequently be restricted, when he/she will be exploited.²⁸

Certainly, the said criminal case established that the victim consented to be transported to Israel to work as a prostitute. In fact, the court confirmed that the collected evidence proves that the accused organized the trafficking of A. M. from Lithuania to Israel for prostitution with her agreement. A. M. was exported from Lithuania (i.e. the transportation took place); however, she was returned by the Israeli authorities. This obviously constitutes an agreement for the exploitation of a human whose freedom is unrestricted (in this case, the transportation of the victim) but circumstances reveal that freedom of this person will be restricted later – when she is exploited. We could assume that this case could qualify as an attempted trafficking of human beings. It would be naive to assume that the victim didn't actually know the purpose of her travel to Israel, which was also confirmed by the statements of witnesses. Moreover, prior to traveling to Israel, A. M. worked as a prostitute in Lithuania.

The court re-qualified the actions of the accused from Section 1 of Article 147 into Section 2 of Article 307 of the Criminal Code of Lithuania – the transport of a person with his/her consent for prostitution to the Republic of Lithuania or from the Republic of Lithuania.

*“In another criminal case, G.D. was convicted because on 18 March 2004, around 18:00, at a car parking lot on Naujioji street in Alytus, with the purpose of financial profit, attempted to sell the victim E. K. to the anonymous witness No. 5 and V. J., both acting on the basis of crime imitation model 2S-105. However, G.D. due to the reasons beyond her control could not complete the crime as this criminal act was monitored and interrupted by law enforcement officials. G. D. committed a crime defined in the Articles 22 and 147 of the Criminal Code of Lithuania”.*²⁹

The Court of Appeals panel examined the question of qualification of the criminal act committed by G. D. in line with Article 147 of the Criminal Code of Lithuania and found that there were insufficient facts in the case to indicate that the victim E. K. was somehow dependant on G. D. The panel reached a contradictory conclusion that in case of a successful sale of E.K., the buyers, had they not been acting on the basis of a crime imitation model, would have gained full control over the victim.

The conclusion of the Court of Appeals that in case of successful deal the buyers could fully control E. K. was based on “the practice of analogous cases”.

28 Fedosiuk, O.

29 Lietuvos Aukščiausiojo Teismo nutartis baudžiamojoje byloje (bylos Nr. 2K-332(2006)). [Supreme Court of Lithuania, ruling in the criminal case No. 2K-332(2006)].

However, the Supreme Court stated that this kind of claim is impermissible in criminal proceedings. Elements of a criminal act in a given case must be proven by evidence collected in that case. One cannot conclude that E. K.'s freedom would be curtailed based only on information of what could happen to women engaged in prostitution abroad.³⁰

Presumption that victim's freedom will be restricted in the future was overturned.

Another example of judicial practice when courts cannot find direct proof of the violation of a victim's freedom according to Article 147 of the Criminal Code of Lithuania and hence discharge the suspects is presented below.

“Šiauliai regional court, on 10 September 2006, discharged A. K. and A. J. of trafficking in human beings and re-qualified their criminal act to profiting from other person's prostitution. The victim A. T. was deceived that she would earn a lot of money, the work will be easy, and she could come back to Lithuania at any time. However, while in London, she was ruthlessly exploited, kept in some sort of apartment and ultimately sold to an Albanian criminal group.”³¹

These circumstances reveal that there are indications of human trafficking in the actions of A. K. and A. J. However, the court did not contemplate this and reputed that A. T. voluntarily agreed to go to London for prostitution. Her freedom was not restrained because she had freedom of movement and the defendants did not use any violence against her.

In explaining acts infringing freedom we have to thoroughly scrutinize the influence made on a victim in curtailing her free will (was violence used against her, was she threatened or deceived, was she abused by taking advantage of her vulnerability); we also have to consider whether the victim had limited possibilities to escape from the traffickers, whether her freedom of movement was restricted, identification documents taken away, daily life controlled, or social contacts blocked.

The following is another example where a decision by the Supreme Court refers to a criminal act against a person's freedom:

“A. A. and V. G. on 25 January 2002 around 01:00 p.m. in Klaipėda (exact location not established), conspiring in advance and acting in concert, acquired for the price of 800 US dollars (3200 litas) two Belorussian citizens T. Š. and T. S. from persons unidentified by the investigation to sexually abuse and forcibly engage them in prostitution in Lithuanian territory, city of Klaipėda with the purpose of material gain. The activities committed by A. A. and V. G. constitute a crime described in Article 147 of the Criminal Code of Lithuania, 2000”.³²

30 Lietuvos Aukščiausiojo Teismo kasacinė nutartis (bylos Nr. 2K-332(2006)). [Supreme Court of Lithuania, cassation ruling in case No. 2K-332(2006)].

31 Šiaulių apygardos teismo baudžiamoji byla (bylos Nr. 1-56-300(2006)). [Šiauliai regional court, criminal case No. 1-56-300(2006)].

32 Lietuvos Aukščiausiojo Teismo kasacinė nutartis (bylos Nr. 2K-538(2003)). [Supreme Court of Lithuania, cassation ruling in case No. 2K-538(2003)].

A. A. and V. G. claimed that the decision of the regional court should be annulled as the criminal law (Item 1 of Section 1 of Article 369 of the Criminal Procedure Code) was not duly applied in their case. They disagreed with the assessment of the evidence provided by the regional court that found them guilty of the crime foreseen in Article 147 of the Criminal Code of Lithuania. According to the Article 147, the object of the offence is a person's freedom.

There was not enough evidence collected in the case to prove that A. A. and V. G. restricted the freedom of the victims—the victims had the keys to the apartment, could leave and come back at will and had the opportunity to seek out help in case of their improper treatment. They used taxi services and met other people. Moreover, another girl lived in the apartment. These factors confirm that the freedom of the victims was not restrained. Confirming the legitimacy of the conviction for trafficking in human beings, the panel declared that the actions of A. A. and V. G. did not constitute an offence foreseen in Article 147 of the Criminal Code of Lithuania. However, the freedom of the victims was indeed restrained. Their passports were taken away, they did not have money and they were controlled as they were driven to and from clients.

In yet another criminal case, it was determined that a person's freedom was restricted based on the fact that the victim received detailed explanation about her transportation to London where she was suppose to work as a prostitute. The nature of the work and the conditions were also explained. By order of the defendants she was brought to Klaipėda where she had to wait for several days before her passport was finally taken away and she departed.³³

3.4. Taking Advantage of Dependence and Vulnerability as Indicators of Human Trafficking

Taking advantage of dependence is a specific type of psychological violence where a perpetrator makes it known to a victim, either directly or by allusion, that he/she must obey the perpetrator on whom he/she depends to avoid trouble. Dependence presupposes such relations between people where the welfare of one person depends on the other person's good will. Taking advantage of vulnerability is a malicious proposal to a person who is obliged to accept that proposal due to his/her disadvantage. According to the 2002 Framework Decision of the Council of the European Union, abuse of vulnerability is when a victim has no real or acceptable choice but to succumb to abuse. Based on this assumption, trafficking in human beings can also be recognized when a person is abused by way of cancelling debt or escaping poverty.

A review of judicial practice revealed a case of legal assessment of indicators of dependency and vulnerability that qualify infringement of personal freedom:

“The activities of D. S. in selling R. G. were correctly qualified in accordance with Article 147 of the Criminal Code of Lithuania (26-09-2000 Criminal Code edition valid until the new edition passed on 23-06-2005 by law X-272 came into force on 30-06-

33 Lietuvos Apeliacinio teismo baudžiamoji byla (bylos Nr. 1A-353(2005)). [Appeals Court of Lithuania, criminal case No. 1A-353(2005)].

2005) whereas it was indisputably proven that D. S. took advantage of the poor health conditions of the victim R. G. (diagnosed as an emotional and behavioural disorder), her social situation (restricted parental rights; residing in a special care centre), and her under-age status and, therefore, violated her freedom by curtailing her free will and selling her with the intention to involve her in prostitution.”³⁴

3.5. The Factors of Previous Sexual Experience and Voluntary Travelling Abroad for Sexual Services

Usually in cases of trafficking in human beings, defendants are accused of recruiting girls for travelling abroad for prostitution or offering already recruited girls to other buyers for their trafficking to European Union countries. Victims often confirm that they were recruited for prostitution on a voluntary basis.

*“E. Ž. and H. S. are convicted of the fact that acting in conspiracy they trafficked human beings, namely: on 13 March 2001 in Kazlų Rūda (exact location not established) E. Ž. acting in collusion with H.S. and with the purpose to make profit deceitfully promised to the victim B.S. to provide transportation to Essen, Germany. On 14 March 2001, using the vehicle VW Jetta licence plate GMO 106 they transported B. S. out of Lithuania and on 15 March 2001 in Germany, in the parking area of a gas station near Hanover sold her for 3000 DM for prostitution to an unidentified person.”*³⁵

E. Ž. and H. S. do not deny that they provided B. S. transportation to Germany as a fellow-traveler. However, this happened with the agreement of B. S., and they did not deceive her nor sell her. The victim stated that she did everything voluntarily; moreover, she did not even try to contact the police. Her explanation that she did not contact the police because of fear is unfounded because being yet in the sixth grade she was found engaging in prostitution and was threatened with imminent administrative charges. The fact of selling or paying money was not proven, the buyers and benefit received were not identified and the time and place of sale were not established. Innocence of the defendants was confirmed by the fact that the victim did not contact the police.

The Supreme Court rejected the defendants’ appeal for this crime on the grounds that the mentioned factors about B. S.’s previous sexual experience and her voluntary travel abroad for prostitution are irrelevant to the classification of activities by Article 147 of the Criminal Code of Lithuania and simultaneously confirm the victim’s statements on the circumstances of her transfer.³⁶

In another case concerning human trafficking, the Supreme Court ruling on the intentions of the defendants (H. S. and D. D.) to traffic S.K. abroad for prostitution was based on the victim’s statements that the defendants visited S. K. at home, convinced her themselves or through other people to go abroad for prostitution. D. D.’s statements

34 Šiaulių apygardos teismo baudžiamoji byla Nr. 1-51-154(2007). [Šiauliai regional court, criminal case No. 1-51-154(2007)].

35 Lietuvos Aukščiausiojo Teismo Kasacinė nutartis baudžiamojoje byloje Nr. 2K-578(2004). [Supreme Court of Lithuania, cassation ruling in criminal case No. 2K-578(2004)].

36 *Ibid.*

given during the pre-trial investigation confirm these facts. Thus, the Supreme Court found that the above mentioned information constitutes a consistent and versatile evidential basis confirming that H. S. and D. D. are guilty for the crimes committed against S. K. The appealing arguments concerning S.K.'s previous engagement in prostitution were found to be irrelevant for the qualification of the criminal act; therefore, courts did not reasonably investigate and assess this factor.

“H. S. and D. D. are convicted of the fact of trafficking in human beings. The defendants, in association with I. J., profited from another person's prostitution, namely: in the middle of May 2001 (exact date not established by preliminary investigation) H. S. and D. D. conspiring in advance and with the assistance of I. J., who at the home of S. K. in Bebruliskės village, Kazlų Rūda municipality, for a reward of 500 litas persuaded S. K. to engage in prostitution in Germany with the purpose of making material profit, transported S. K. with her agreement as well as another girl unidentified in pre-trial investigation by car Dodge Caravan licence plate ZKZ 096 out of Lithuania. Later, at the end of May 2001 (exact date not established) in Celle, Germany, they sold S. K. and the unidentified girl to three unidentified people.”³⁷

In this case again, the defendants disputed the fact that they made material or other profit from the transportation of S. K. out of Lithuania. This was also not confirmed by S. K. They claimed that the fact of sale was not proven. The defendants did not deny the fact of transporting S.K. However, they stated that it was done without any purpose of selling her for prostitution. There is no information in the case about prior involvement of H. S. and D. D. in the trafficking of human beings for prostitution and victim's will was not firmly established. In fact, the relatives of S. K. confirmed that she planned and arranged the trip herself. The defendants also appealed to the fact that S. K. was previously engaged in prostitution and she had gone abroad for the same reason before. Upon arriving in Germany, the girls disembarked in Hanover and were no longer under the influence of others.

Thus, prior agreement by a victim of human trafficking with regard to premeditated exploitation is irrelevant if any of the acts defined in Article 147 of the Criminal Code of Lithuania are used against him or her.

Conclusions

After the dissolution of the Soviet Union one of the most urgent problems in Lithuania, that of unemployment, has affected women negatively, especially those raising children. After 1990, Lithuania experienced an unprecedented growth of the sex and entertainment industry. This growth may be conducive to an increase in women trafficking. The lack of economic opportunity in Lithuania has led women to migrate, making them vulnerable to trafficking. Other factors contributing to this problem were the existence of organized crime and the geographical location of the Baltic States, which lie

37 Lietuvos Aukščiausiojo Teismo Kasacinė nutartis baudžiamojoje byloje Nr. 2K-578(2004). [Supreme Court of Lithuania, cassation ruling in criminal case No. 2K-578(2004)].

on the crossroads between Western Europe and the former Soviet Union. The level of trafficking in people is not decreasing, despite efforts on behalf of government agencies, and non-governmental and international organizations.

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

Trading in persons persists because very few people are punished for it. The number of cases against traffickers in Lithuania is still relatively small. It is quite rare that women who manage to escape dare to appeal to the courts. They are embarrassed of what has happened to them, and are frequently frightened and threatened. It takes a long time for a case to be investigated by the courts, and the traffickers often manage to get away. Those who engage in women trafficking feel confident that they can evade criminal liability.

To combat human trafficking on both, the international and the national level, there is a need for a clear understanding of what legal attributes constitute such a crime and what must be proven at trial. Even an experienced prosecutor or judge may not easily comprehend the essence of the norm that criminalizes the act of selling and buying people.

To prove the fact of trafficking in human beings in Lithuania, it is necessary to prove a violation of personal freedom as defined under Article 147. The main problem and challenge is to define the threshold between illegal transactions that violate the individual freedom and free-will agreements between two persons, where one of them gives the consent to be exploited. It is quite difficult to determine when a free-will agreement between adults may evolve into repressive exploitation. In most of the cases, victims give their consent to be enslaved; in some cases they themselves seek out a person to help them find placement in a prostitution network abroad. Many practising lawyers do not comprehend the context of trafficking in human beings. In the Lithuanian legal practice, there is always a risk that the legal notion of trafficking in humans may be perverted by defence arguments substantiating free will between adult persons.

The Mechanism violating freedom in the trafficking in human beings is best defined by the term “*control restricting freedom*”. This term presupposes certain continuous character in the restriction of personal freedom, which is essential for exploitation.

Frequently, investigators of human trafficking cases discover the fraudulent character of trafficking in human beings. Victims are often misled by giving them incorrect information or withholding of the truth. In the area of trafficking in human beings, false promises are also recognized as deception. Based on this aspect, trafficking in human beings could also qualify as involvement in exploitation by means of misleading with regard to the promised nature of the work and working conditions, earnings, etc. There are many examples from judicial practice wherein perpetrators promised the victim a dishwasher’s or waiter’s position abroad, but actually intended to sell the victim.

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 process of the harmonizing definitions has only begun. While trafficking in human beings is a rewarding business for organized crime groups, it is also a vehicle for many desperate people to leave dire social and economic conditions for something they believe to be better. This means that the implementation of these laws needs to make sure that punishing factors are adequate for preventing this crime. It is possible that in the future this crime will be considered a crime against the humanity, but this will not solve the problem. The real issue today is to understand the phenomenon and find appropriate remedies.

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PREKYBOS ŽMONĖMIS BAUDŽIAMOJO TEISINIO VERTINIMO YPATUMAI

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Santrauka. *Vienas iš pavojingiausių šiuo metu tarptautinei bendruomenei gresiančių žmogaus teisių pažeidimų yra prekybos žmonėmis fenomenas. Lietuva tapo šalimi, ne tik eksportuojančia į Vakarų prostitutėmis užverbuotas moteris, bet ir priimančia tokias moteris iš kitų šalių. Prekyba žmonėmis – šiuolaikinės vergovės forma, nusiųtikiusi į labiausiai pažeidžiamus visuomenės narius ir siekianti gauti iš jų kuo daugiau naudos bei pelno. Lietuvoje nėra nusistovėjusios teisminės praktikos sprendžiant tokio pobūdžio baudžiamąsias bylas. Paprastai teismai trunka kelerius metus, o kartais ir ilgiau. Nagrinėjant tokias bylas žmogus būna traumuojamas, pirmiausiai jam teikiama pagalba ir sąmoningai laukiama, kol auka galės kalbėti apie sau nemalonius dalykus. Todėl dažnai tiriami jau seniau įvykę atvejai. Iškiteisminio tyrimo metu aukos dažnai patiria spaudimą, joms grasina kaltinamieji bendrininkai. Aukų, liudijančių teisme, apsaugos sistema Lietuvoje veikia labai menkai, todėl išsigandusios aukos dažnai keičia parodymus, atsiima pareiškimus. Taigi asmenys, padarę nusikalstamas veikas, lieka nenubausti. Straipsnyje autorius analizuoja Lietuvos teismų prekybos žmonėmis baudžiamojo teisinio vertinimo praktikos ypatumus.*

Reikšminiai žodžiai: *prekyba žmonėmis, prekybos žmonėmis auka, nukentėjusiojo laisvės pažeidimas.*

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