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HUMAN TRAFFICKING AS A CRIME AGAINST HUMAN FREEDOM

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Abstract

The crime of trafficking in human beings has appeared in Lithuanian criminal law relatively recently – on 2 July 1998. Both the name of the offence and the content of the norm are not usual in the sense of legal technique, since it does not refer to goods, but to the buying and selling of a person. **Relevance of the topic:** the relevance of the chosen topic is determined by the fact that human trafficking in the Republic of Lithuania is increasing every year. According to the reports submitted by the Ministry of the Interior of the Republic of Lithuania, pre-trial investigations of trafficking in human beings were mostly for sexual exploitation, but it is noticeable that the number of pre-trial investigations of trafficking in human beings for non-sexual exploitation (for committing crimes, forced work, pornography, illegal migration, drug trafficking, falsification of documents) has increased to such an extent that it has exceeded the number of investigations of trafficking in human beings for sexual exploitation. **Objectives of the study:** 1. To define the concept of human trafficking as a crime against human freedom. 2. To analyse the criminal liability for trafficking in human beings as a crime against human freedom regulation in Lithuania. 3. To analyse the problems of applying criminal liability for trafficking in human beings in Lithuanian court practice. **Aim of the study:** to expose human trafficking as a crime against human freedom. **Object of the study:** trafficking in human beings as a crime against human freedom. **Research methodology:** The Article uses a descriptive approach to research legal doctrine, analyses case law and interpret legal provisions in order to summarize the scientific literature analyzed and used. **Results:** The most common method of committing the offence of trafficking in human beings is deception, which takes the form of an offer of employment. It is easier for the accused to achieve their goals by exploiting the vulnerability of the victim. The vulnerability of the victim is determined by the following characteristics: difficult material situation, existing financial obligations, antisocial family, health problems, etc. It is important to note that the accused often refer to the fact that the victim consented to being exploited. Even if the victim of trafficking in human beings has consented to being exploited, but his or her consent has been extracted by breaking his or her will, the victim's consent is not taken into account and does not make the exploitation lawful.

Keywords: human trafficking, human freedom, crime, crime against human beings.

Introduction

Human trafficking is a complex problem around the world and a major concern for society (Tortolero, 2020). The offence of trafficking in human beings has appeared in Lithuanian criminal law relatively recently – on 2 July 1998. Both the name

of the offence and the content of the norm are not conventional in the sense of legal technique, since it is not about goods, but about buying and selling a person. The inclusion of the norm of trafficking in human beings in the Criminal Code was prompted by the need to take measures against the widespread criminal phenomenon in the world and in Lithuania, when people are transported and sold for the purpose of exploitation. Trafficking in human beings means the recruitment, transportation, transfer, harboring or receipt of persons by means of intimidation, force or other forms of coercion, abduction, fraud, deception, fraud, abuse of position or vulnerability, or the payment or acceptance of money or other benefits for the purpose of obtaining the consent of another person in control of the person in question, with a view to their exploitation. Exploitation includes the exploitation of others in the form of prostitution and other forms of sexual exploitation, forced work or services, slavery or activities similar to slavery, servitude or removal of organs. Internet access.

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(What is trafficking in human beings. Trafficking in human beings (prekybazmonemis.lt., 2022.))

The implementation of the rule of law, the strengthening of democracy, the promotion and protection of human rights, and the promotion and protection of human rights, have all paid particular attention to the negative social phenomenon of human trafficking. According to the United Nations Office on Drugs and Crime, the number of people currently in slavery is the highest in human history. According to statistics from the European Union institutions, it can be said that every year, human trafficking to Western Europe comes from Central and Eastern European countries. It is not only women and girls who are trafficked, but also men (as forced work), especially boys. People are trafficked for forced work, prostitution, other forms of sexual exploitation, begging, criminal activities, organ donation, fighting, etc. Forced prostitution and trafficking in human beings are negative phenomena that are closely linked and often treated as parallel problems. Trafficking in women for sexual exploitation is one of the most serious human rights violations, and trafficking in human beings is on the rise globally due to the increase in organized crime and its profitability. (Report A7-0071/2014 of the European Parliament's Committee on Women's Rights and Gender Equality of 3 February 2014 on sexual exploitation and prostitution and their impact on gender equality (2013/2013(INI)).

Human trafficking is one of the most widespread crimes in the modern world, where human beings are deprived of their nature and their freedom, and are transformed into objects and objects of illicit trade – living commodities. The recruitment, sale, purchase, transfer, captivity and transport of human beings constitute unlawful acts against human beings (the victim), and are recorded in the criminal law.

Concept of trafficking in human beings as a crime against human freedom

Trafficking in human beings is an unlawful act that violates not only the freedom of the individual but also almost all human rights and freedoms enshrined in the rule of law. It is an unusual crime in that its object is not a thing, but a person with a will. Article 21 of the Constitution of the Republic of Lithuania enshrines one of the most important natural human rights: "The human person is inviolable" (Constitution of the Republic of Lithuania 1992). Trafficking in human beings can be defined as a transaction which is entered into with the intention of exploiting a person. It should be noted that often

the victim agrees to be exploited. Trafficking in human beings is shaped by the processes taking place in society: socio-economic disadvantage, poverty, gender violence, drug addiction, drunkenness, changes in values, moral norms etc. Trafficking in human beings is linked to crimes such as falsification and forgery of documents, smuggling of people across national borders, extortion, exploitation for forced work, theft, drug distribution. In order to make a profit, traffickers involve one, several or even a dozen people in sexual exploitation, prostitution, forced work, criminal activities, begging, drug trafficking or even organ donation (Voitkevich, 2017). Lee identifies 6 main approaches to human trafficking: a modern form of slavery, an example of the globalization of crime, a problem of transnational organized crime, a synonym for prostitution, a migration problem and a human rights problem (LEE, M., Trafficking and Global Crime Control. London: Sage Publications Ltd., 2011). According to S. Devey, human trafficking is a social phenomenon of unknown scale and proportions that is directly linked to war, sexism, inequality, corruption and the basic human need to live in dignity (DEWEY, S., Hollow Bodies: Institutional Responses to Sex Trafficking in Armenia, Bosnia and India. USA. Kumarian Press, 2008). In most cases, a person is trafficked when he or she wants to escape from a difficult life situation and is promised a better future. Alternatively, when a person wants to build a better life and look for work somewhere. So it's not about naivety, but about the need for a better life. It is also about demand. If the market did not demand certain services, there would be no need for human trafficking (It's not only prostitutes who are victims of human trafficking – LRT...2016). In the area of human trafficking, Lithuania is not only an export, transit but also an import country. Compared to its Baltic neighbors, it has one of the highest levels of human trafficking. Human trafficking is considered to be the second most profitable criminal activity after arms and drugs. Due to the latency of the crime, it is difficult to say the exact scale of the crime, but experts say that there are around 27 million victims of human trafficking in the world, and that Lithuania has the highest trafficking rates among the Baltic States. (Human trafficking is changing: instead of sexual exploitation, it's the commission of criminal acts. Prosecutor's Office of the Republic of Lithuania prokuraturos.lt..., 2022).

In her Article "Human trafficking is changing: instead of sexual exploitation, it is the commission

of criminal acts”, G. Večerinskienė, prosecutor of the Organized Crime and Corruption Investigation Division of the Kaunas Regional Prosecutor’s Office, pointed out that “there is an obvious change in the structure of the victims, who are more and more often men, while in the past they were exclusively women. Often, the victims are young men, minors or those who have barely reached the age of majority, who, without any income in Lithuania, agree to go abroad to supposedly work and “earn good money”. When they leave, it turns out that they will have to commit criminal acts, but with no money to return, no foreign language skills, and in many cases no identity document (which is taken away by the persons who control them), they have no choice but to accept what is demanded of them (“Trafficking in human beings is changing: instead of sexual exploitation, it is the execution of criminal offences. Prosecutor’s prokuraturos.lt..., 2022”).

Trafficking in human beings is treated globally as a form of slavery, and this is reflected in the form of confinement that restricts a person’s freedom. According to Prof. Dr. O. Fedosiuk, the best description of the mechanism of violation of freedom in human trafficking is the concept of “freedom-restricting control” (FEDOSIUK, O., Human trafficking as a crime against human freedom. Vilnius, Jurisprudencija..., 2003), because it presupposes the continuity of the restriction of freedom. This means that the control of the exploited person forms the basis for his/her disposal, which takes various forms: physical isolation (tying, locking in a room, restricting the place of stay, etc.), hiding the person (usually from law enforcement authorities). “A person may be held in captivity simply because he or she is threatened or his or her vulnerability is exploited by means of methods used to bend his or her will” (Mickevičius, D., et. al. Criminal Procedure Code of the Republic of Lithuania Commentary to the Code. Second book. Special Part. Vilnius..., 2009) coercion, deception or other forms of restraint of liberty. It should be noted that the victim may be held captive against his will or with his consent. “Consent to being held in captivity does not exclude the possibility of incriminating the offence, as the important thing is not the victim’s assessment of the situation, but the objective impossibility of choosing his or her location” (Fedosiuk, O., Problems of interpretation and application of the new version of the trafficking in human beings offence norm of June 23, 2005. Vilnius: Jurisprudence, 2017).

The physical freedom of a person is manifested as the ability to make body movements, to move in space, to choose one’s location. The freedom of the will of a person means his or her ability to choose his or her own behavior, so to say, to infringe the freedom of the will of another person means to force him or her to behave in the way the perpetrator wants. The deprivation of a person’s physical liberty is linked to the use of physical and mental coercion against him, whereas the imposition of the criminal will may be based on coercion or deception, the victim’s minority and his physical and mental helplessness. This classical view of the forms of violation of freedom. When analyzing the crime of trafficking in human beings, we are confronted with the ways in which a person is exploited. Forced work or services, begging, committing crimes in other countries, various forms of sexual exploitation, surrogacy, marriage of convenience, illegal fighting, etc. The most common recruitment methods used to lure people into the trafficking trap are: offers of friendship, love, a good job with a high salary, offers for children and adolescents to earn money to have money of their own, getting into and reminding them of their debts, blackmail, and various forms of intimidation. In Lithuania, as in the rest of the world, the use of online technologies in human trafficking has been observed. Social networks and dating portals are becoming a recruitment tool. It is a fast-moving and difficult-to-control area. With the help of the Internet, it is easy for the organizers of criminal activities to select, find, persuade and even actually exploit victims.

An overview of the regulation of criminal liability for trafficking in human beings as a violation of human freedom in Lithuania

Human trafficking began with the slave trade. Therefore, in 1814, a treaty was signed between France and Britain condemning the slave trade (DRAKŠIENĖ, A., BOLZANAS, D., The Concept of Human Trafficking. Law, 2004). Trafficking in human beings is restricted by international legislation, such as the 1963 Vienna Convention on Consular Relations or the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 15 November 2000. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Crime.

As regards the way in which the phenomenon of trafficking in human beings is reflected in the Criminal Code of the Republic of Lithuania, first

of all, we should mention the norm called trafficking in human beings in Article 147 of the Criminal Code of the Republic of Lithuania (2000) (hereinafter referred to as 'the CC'). A special norm of trafficking in human beings is the purchase or sale of a child (Article 157 of the CC). Indirectly, trafficking in human beings is criminalized by provisions such as the exploitation of a child for pornographic purposes (Art. 162 CC), profiting from the prostitution of another person (Art. 307 CC), engaging in prostitution (Art. 308 CC), unlawful deprivation of liberty (Art. 146 CC), restriction of the liberty of a person to act (Art. 148 CC), kidnapping or swapping of a child (Art. 156 CC), illegal crossing of a State border (Art. 291 CC), and illegal trafficking in human beings), unlawful transportation of persons across the state border (Art. 292 of the CC), organizing the travel of citizens of the Republic of Lithuania abroad illegally for the purpose of staying there or leaving them unassisted (Art. 293 of the CC). It can be said that this set of norms constitutes the legal basis for the pursuit of a targeted criminal policy against the exploitation of human beings by means of prostitution and other forms of exploitation of persons in the country of origin. However, what is unique among these norms is the criminal offence of trafficking in human beings, the purpose of which is not only to directly prohibit illegal transactions in human beings, as required by international law, but also to intensify the activities of law enforcement authorities in combating this phenomenon and to give a certain direction to criminal policy.

According to the statistics of the Ministry of the Interior of the Republic of Lithuania, in 2021, 7 new pre-trial investigations (hereinafter "IT") were initiated into domestic and international trafficking in human beings under Article 147 (trafficking in human beings), Article 157 (purchase or sale of a child), and Article 147-1 (exploitation for forced work or services) of the Criminal Code of the Republic of Lithuania (hereinafter "CC"). In total, in 2021, there were 17 ITs in the country, launched between 2017 and 2021, on domestic and international trafficking in human beings. Of the 7 new ITs launched, 3 were launched on trafficking in human beings for criminal offences, 3 on trafficking in human beings for forced work, 1 on trafficking in human beings for begging and sexual exploitation. (2021 Overview of the situation of the fight against trafficking in human beings in the Lithuania (lrv.lt)).

The Supreme Court of Lithuania, in its ruling No. 2K-173-693/2018 of 29 May 2018, interpreted

that "the very composition of Article 147 of the CC clearly establishes that the victim's consent is not decisive for the qualification of the act, even if it is present, if the other established features are established, the perpetrator shall be held liable under the Article. Contrary to the assertions of the cassation appeals, the cassation case-law clearly points out that, as in European law, Lithuanian criminal law establishes a very important rule that the consent of the victim is of no legal significance when prosecuting a person for trafficking in human beings. Consent to be exploited, given by means of deception, abuse of a person's vulnerability or dependence, not to mention coercion and threats, cannot be considered voluntary. In view of the above, the claims of the cassation appeals that the voluntary consent of the victims, consciously aware of where they are going for what activities, negates the elements of the trafficking in human beings component must be dismissed as unfounded" (Judicial Collegium of the Criminal Division of the Lithuanian Supreme Court. The Court of Justice of the European Union, Judgment of 29 May 2018 in the criminal case A. U., G. B. v. I. M., M. A., Ž. K., No. 2K-173-693/2018, <https://www.teismai.lt/lt>, 2022). Consequently, "the consent of the victim is of no legal significance in prosecuting persons for trafficking in human beings" (Panel of Judges of the Criminal Cases Division of the Supreme Court of Lithuania. 30 May 2019, ruling in the criminal case S. K., V. Š. v. O. V., No. 2K-157-976/2019).

Analyse the problems of criminalising trafficking in human beings in lithuanian court practice

When analyzing the criminal offence of trafficking in human beings, we are confronted with the methods of exploitation of a person. A review of the case law shows that the most common forms of exploitation are: forced work or services, begging, committing crimes in other countries, various forms of sexual exploitation, surrogacy, marriage of convenience, illegal fighting, etc. It is important to note that the accused often refer to the fact that the victim consented to being exploited. Even if the victim of trafficking in human beings has consented to being exploited, but his or her consent has been extracted by breaking his or her will, the victim's consent is not taken into account and does not make the exploitation lawful. (12 April 2019, ruling in the criminal case G. G., M. M. v. A. D., A. S., No. 2K-93-628/2019). Judgment of 29 May 2018 in the criminal case A. U., G. B. v. I. M., M. A., Ž. K., No. 2K-173-693/2018).

The Supreme Court of Lithuania, in its ruling of 12 April 2019, No. 2K-93-628/2019, held that “the victim A. D. was vulnerable, took full account of his social and material situation, i.e., due to his mother’s death in a traffic accident and his father’s drunkenness, he had lived in a foster care home since the age of eleven, and at the time of the relevant time he was studying at a vocational education institution, lived in a dormitory, received a small orphan’s allowance and a scholarship (180 Eur in total), had no other income” (Lithuanian Supreme Court, Criminal Division, Judicial Panel. Judgment of 12 April 2019 in the criminal case G. G., M. M. v. A. D., A. S., No. 2K-93-628/2019). All these circumstances have been recognized by the court as criteria of vulnerability of a person. According to the President of the Criminal Division of the Supreme Court of Lithuania, “Judges must not forget that there are no reliable victims in such cases. It is vulnerability that should be considered as a source of evidence.

The Supreme Court of Lithuania, in its ruling No. 2K-173-693/2018 of 29 May 2018, interpreted that “the very composition of Article 147 of the CC clearly establishes that the victim’s consent is not decisive for the qualification of the act, even if it is present, if the other established features are established, the perpetrator is liable under this article. Contrary to the claims of the cassation appeals, the cassation practice clearly states that, as in European law, the Lithuanian criminal law establishes a very important rule that the consent of the victim is of no legal significance for the prosecution of persons for trafficking in human beings. Consent to be exploited, given by means of deception, abuse of a person’s vulnerability or dependence, not to mention coercion and threats, cannot be considered voluntary. In view of the above, the claims of the cassation appeals that the voluntary consent of the victims, consciously aware of where they are going for what activities, negates the elements of the trafficking in human beings component must be dismissed as unfounded” (Judicial Collegium of the Criminal Division of the Lithuanian Supreme Court. The Court of Justice of the European Union, Judgment of 29 May 2018 in the criminal case A. U., G. B. v. I. M., M. A., Ž. K., No. 2K-173-693/2018). Consequently, “the consent of the victim is of no legal significance in prosecuting persons for trafficking in human beings” (Judicial Panel of the Criminal Cases Division of the Supreme Court of Lithuania. 30 May 2019, ruling in the criminal case S. K., V. Š. v. O. V., No. 2K-157-976/2019).

According to the data of the Prosecutor General’s Office of the Republic of Lithuania, the main purpose of exploitation remains prostitution and other related activities... In recent years, a frequent purpose of exploitation is exploitation for criminal purposes (understood as forcing a person to engage in theft, drug trafficking or any other activity punishable by criminal law). In third place, the General Prosecutor’s Office refers to forced labour (the use of a person to perform any kind of work or service when this has been demanded by coercion, under threat of penalties, and the person has not consented to do so of his or her own free will). Other targets of exploitation include pornography, online sexual services or marriage of convenience. However, in recent years, there has been a trend towards exploiting the victim for a combined purpose, such as forced work and, at the same time, prostitution. (Lithuania Presentation by Prosecutor A. Meška, Prosecutor of the Criminal Prosecution Department of the General Prosecutor’s Office of the Republic of Lithuania, on 25 March 2015, “The Prosecutor’s Office’s Experience in Addressing the Issue of Human Exploitation” at the international conference “Are You Pro-Violence? Where are you?” at the Seimas of the Republic of Lithuania).

Conclusions

1. When interpreting the content of the trafficking in human beings norm, it is of particular importance to state that the restriction of the victim’s freedom may arise not only from coercion, exploitation, powerlessness, but also from a certain agreement between the victim and the perpetrator, when consent to be exploited is obtained. Among the relevant circumstances indicating the existence of a control that restricts freedom, in addition to the use of coercion, are the fact that the victim is involved in the exploitation by deception as to the nature and conditions of the illegal work, the amount of the remuneration, the restriction of his or her freedom of movement, the taking of his or her identity documents, the control of his or her daily life, the blocking of social contacts, and the taking advantage of the victim’s illegal status.

2. Trafficking in human beings is a global phenomenon and its criminalization has its roots in international and European Union law. Trafficking in human beings is enshrined in the chapter of the Criminal Code of the Republic of Lithuania devoted to crimes against human freedom. In Lithuania, the norms of trafficking in human beings are laid down in Article 147, Article 157, Article 162, Article 307, Article 308, Article 146,

Article 148, Article 156, Article 291, Article 292, Article 293, Article 148, Article 291, Article 292, Article 293 of the CC.

3. From the analyzed case law, it has been observed that the most common method of committing the offence of trafficking in human beings is deception, which is manifested by the offer of work. It is easier for the perpetrators to achieve their goals by taking advantage of the vulnerability of the victim. The vulnerability of the victim is determined by

the following characteristics: difficult financial situation, existing financial obligations, an antisocial family, health problems, etc. It is important to note that the accused often refer to the fact that the victim consented to being exploited. Even if the victim of trafficking in human beings has consented to being exploited, but his or her consent has been extracted by breaking his or her will, the victim's consent is not taken into account and does not make the exploitation lawful.

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ТОРГІВЛЯ ЛЮДЬМИ ЯК ЗЛОЧИН ПРОТИ СВОБОДИ ЛЮДИНИ

Анотація

Злочин торгівлі людьми з'явився в литовському кримінальному законодавстві відносно недавно – 2 липня 1998 року. Як назва злочину, так і зміст норми не є звичайними в сенсі юридичної техніки, оскільки вона не стосується товарів, але до купівлі-продажу людини. Актуальність теми: актуальність обраної теми визначається тим, що торгівля людьми в Литовській Республіці з кожним роком зростає. Відповідно до звітів, наданих Міністерством внутрішніх справ Литовської Республіки, досудові розслідування торгівлі людьми були здебільшого сексуальної експлуатації, але помітно, що кількість досудових розслідувань торгівлі людьми за несексуальна експлуатація (для вчинення злочинів, примусова робота, порнографія, нелегальна міграція, торгівля наркотиками, підробка документів) зростає настільки, що перевищила кількість розслідувань торгівлі людьми з метою сексуальної експлуатації. **Завдання дослідження:** 1. Дати визначення поняттю торгівлі людьми як злочину проти свободи людини. 2. Проаналізувати кримінальну відповідальність за торгівлю людьми як злочин проти регулювання свободи людини в Литві. 3. Проаналізувати проблеми застосування кримінальної відповідальності за торгівлю людьми в судовій практиці Литви. **Мета дослідження:** викрити торгівлю людьми як злочин проти свободи людини. Об'єкт дослідження: торгівля людьми як злочин проти свободи людини. **Методологія дослідження:** у статті використовується описовий підхід до дослідження правової доктрини, аналізується судова практика та тлумачення правових норм з метою узагальнення проаналізованої та використаної наукової літератури. **Результати:** найпоширенішим способом вчинення злочину торгівлі людьми є обман, який має форму пропозиції працевлаштування. Обвинуваченим легше досягти своїх цілей, використовуючи вразливість жертви. Вразливість потерпілого визначається такими ознаками: важке матеріальне становище, наявність фінансових зобов'язань, асоціальна сім'я, проблеми зі здоров'ям тощо. Важливо зазначити, що обвинувачений часто посиляється на те, що потерпіла погодилася на експлуатацію. Навіть якщо жертва торгівлі людьми погодилася на експлуатацію, але її згода була вибита шляхом порушення її волі, згода жертви не береться до уваги і не робить експлуатацію законною.

Ключові слова: торгівля людьми, свобода людини, злочинність, злочин проти людини.

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