



Tieslietu ministrija

Project No.JUST/2010/KPEN/AG/1546 “Possibilities of solution of topical problems of restorative justice in the European Union”

Training course “Recognition, investigation and prevention of human trafficking as an effective tool for the termination of the phenomena”

26-27 September 2013, Riga

Some years ago there were a lot of such posters at houses and other objects of Lithuanian cities



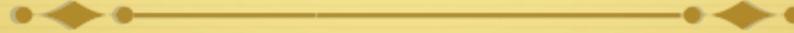
✦ *They will sell you like a puppet. Don't trust easy money abroad.*

More than 100 years of evolution of the international definition of the crime of trafficking in humans



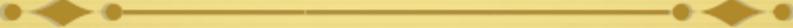
- ✦ International agreements on White Slaves Traffic of 1904 and 1910.
- ✦ Slavery Convention of 1926
- ✦ Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age.
- ✦ United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949
- ✦ Slavery Convention of 1956
- ✦ The Fourth World Women Conference of September, 1995 in Beijing (the Platform for Action of Beijing);
- ✦ Europol Convention of 26 July 1995
- ✦ 18 January 1996 European Parliament Resolution on trafficking in human beings A4-0326/1995;
- ✦ Joint Action of 24 February 1997 adopted by the EU Council;
- ✦ 19 May 2000 European Council Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation;
- ✦ 25 May 2000 UN Optional Protocol to the Convention on the Right of the Child on the sale of children, child prostitution and child pornography.

Necessity to agree upon such questions on international level



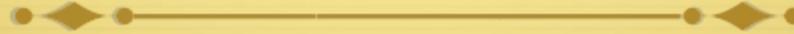
- ✦ what kind of exploitation should identify the trafficking;
- ✦ how to reconcile the liability for trafficking and the fact that many victims give their consent to be exploited;
- ✦ what actions are to be regarded as trafficking;
- ✦ whether a crime is necessarily related to supplying victims from one country to another or it may happen at the local illegal market too;
- ✦ how to treat victims.

The most important sources of international and EU law on trafficking in humans



- ✦ 15 November 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.
- ✦ 16 May 2005 Council of Europe Convention on Action against Trafficking in Human Beings.
- ✦ 19 July 2002 European Union Council Framework Decision on Combating Trafficking in Human Beings. *Replaced by:*
- ✦ 5 April 2011 Directive 2011/36/EU of the European Parliament and of the Council.

The main purposes of international regulation



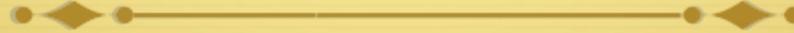
- ✦ to present universal and obligatory to states legal concept of trafficking in persons;
- ✦ to ensure that states would criminalize trafficking in humans in a way of above mentioned definition;
- ✦ to ensure that states would take measures to prevent and combat trafficking in persons, paying particular attention to women and children;
- ✦ to ensure that states would take measures to protect and assist victims of trafficking, with full respect for their human rights;
- ✦ to promote cooperation among States in order to meet these objectives.

The most important legal requirements to the concept of trafficking in humans presented in Directive 2011/36/EU (general notion)



- ✦ *Member States shall take the necessary measures to ensure that the following intentional acts are punishable:*
- ✦ *The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation (art. 2, par. 1).*

Necessary elements of the concept:



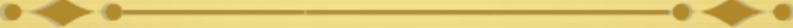
- ✦ 1) trafficking in humans is some kind of transaction where the object is a person;
- ✦ 2) transaction is being done with a purpose of exploitation of a person;
- ✦ 3) transaction is being done under conditions of making an abusive influence upon the victim.

The most important legal requirements to the concept of trafficking in humans presented in Directive 2011/36/EU (exploitation)



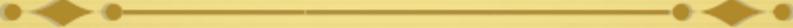
- ✦ *Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs (Art. 2, par. 3).*

The most important legal requirements to the concept of trafficking in humans presented in Directive 2011/36/EU (abusive influence)



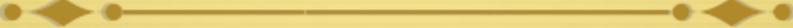
- ✦ The abusive influence upon a victim is a line of delimitation between the trafficking in humans and the deal based on free-will agreement.
- ✦ The abusive influence upon a victim could be related not only with coercion, but also with non-violent forms of influence: deception, abuse of a position of vulnerability and so on.
- ✦ *A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved (art. 2, par. 2).*
- ✦ This means that social factors as poverty, dysfunctional families, health problems, mental disorders, addiction can become the basis for determination of position of vulnerability of a victim.

The most important legal requirements to the concept of trafficking in humans presented in Directive 2011/36/EU (irrelevance of consent)



- ✦ *The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used (Art. 2, par. 4) .*
- ✦ *When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used (Art. 2, par. 5).*
- ✦ *For the purpose of this Directive, “child” shall mean any person below 18 years of age (Art. 2, par. 6).*

The most important legal requirements to the concept of trafficking in humans presented in Directive 2011/36/EU
(victim's safety from prosecution)



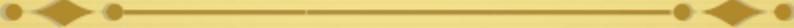
- ✦ *Victims of trafficking in human beings should be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking (Art. 2, par. 7).*

The most important legal requirements to the concept of trafficking in humans presented in Directive 2011/36/EU (liability)



- ✦ *Maximum penalty for trafficking would be not less than five years of imprisonment, while in case where the victim is a child – not less than 10 years of imprisonment (Art. 2, par. 8).*
- ✦ *Liability of legal persons also should be provided (Art. 2, par. 9).*

The important aspect



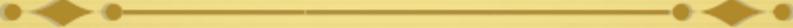
- ✦ The international and EU regulation identifies the trafficking in humans both in the procurement of people for exploitation from one country to another and in the abusive transactions within a single country.

Peculiarities of Lithuanian criminal regulation (separate articles on trafficking in adult persons and children)



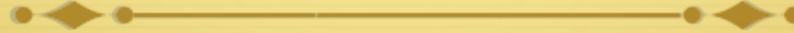
- ✦ One article of Criminal Code dedicated to trafficking in adult people (art. 147) , another – to trafficking in children (art. 157).
- ✦ This distinction allows us to implement requirement that consent of a child to be involved into exploitation is irrelevant in any case, even where no abusive influence was performed.

Article 147 of Criminal Code of Republic of Lithuania. Trafficking in Human Beings (Law of 30-06-2012)



- ✦ 1. A person who sells, purchases or otherwise conveys or acquires a person or recruits, transports or holds in captivity a person by using physical violence or threats or by otherwise depriving him of a possibility of resistance or by taking advantage of the victim's dependence or vulnerability or by resorting to deceit or by paying or granting other material benefit to a person who actually has the victim under his control, where the offender is aware of or seeks involvement of the victim, whether he agreed or not, in slavery or practices similar to slavery, prostitution, pornography or other forms of sexual exploitation, forced labour or services, including begging, criminal activities or using him for other purposes of exploitation shall be punished by imprisonment for a term of two up to ten years.
- ✦ 2. A person who commits the act provided for in paragraph 1 of this Article in respect of two or more victims or causing danger to the victim's life or by participating in an organized group or seeking to acquire the victim's organ, tissue or cells or acting as a civil servant or person performing public administrative functions and authority shall be punished by imprisonment for a term of four up to twelve years.
- ✦ 3. A victim of an act provided in this Article may be released from liability if he was directly forced to commit a criminal act himself under the influence of an action referred in this Article.
- ✦ 4. A legal entity shall also be held liable for the acts provided for in paragraphs 1 and 2 of this Article.

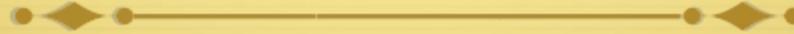
Article 157 of Criminal Code of Republic of Lithuania. Purchase or Sale of a Child (Law of 30-06-2012)



- ✦ 1. A person who offers to purchase or otherwise acquire a child or sells, purchases or otherwise conveys or acquires a child, or recruits, transports or holds in captivity a child, where the offender is aware of or seeks involvement of the victim, whether he agreed or not, in illegal adoptions, slavery or practices similar to slavery, prostitution, pornography or other forms of sexual exploitation, forced labour or services, including begging, criminal activities or using him for other purposes of exploitation, shall be punished by imprisonment for a term of three up to twelve years.
- ✦ 2. A person who commits the act provided for in paragraph 1 of this Article in respect of two or more children or young children or causing danger to the victim's life or by participating in an organized group or seeking to acquire the victim's organ, tissue or cells or acting as a civil servant or person performing public administrative functions and authority,
shall be punished by imprisonment for a term of five up to fifteen years.
- ✦ 3. A victim of an act provided in this Article may be released from liability if he was directly forced to commit a criminal act himself under the influence of an action referred in this Article.
- ✦ 4. A legal entity shall also be held liable for the acts provided for in this Article.

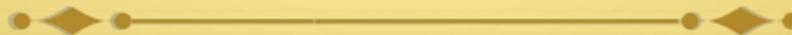
Peculiarities of Lithuanian criminal regulation

(large and not completed list of possible forms of exploitation)



- ✦ slavery or practices similar to slavery,
- ✦ prostitution, pornography or other forms of sexual exploitation,
- ✦ forced labour or services, including begging,
- ✦ criminal activities,
- ✦ removal of the victim's organ, tissue, or cells,
- ✦ any other (not mentioned in the definition) form of exploitation.
 - ✦ In case of child trafficking illegal adoptions is also mentioned in the list of possible exploitation.

Peculiarities of Lithuanian criminal regulation (flexible subjective element)



- ✦ The subjective element of trafficking in humans in definition ensures that the offender can be just aware that the victim is or is supposed to be involved into exploitation.
- ✦ It is not necessary that the offender would seek to involve the victim into exploitation by himself. It is important detail for incrimination of a crime to those traffickers who performs just a technical functions of transporting , convoying or controlling the victim. The argument of a particular accomplice that he was not interested in enslaving the victim and had not performed any abuse upon her, is irrelevant.

Peculiarities of Lithuanian criminal regulation (value protected by law - personal freedom)



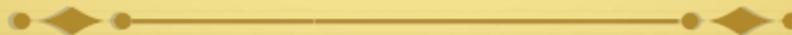
- ✦ The norm on trafficking in humans included in a chapter of crimes against freedom. It means that in cases where adult victims are involved the violation of their personal freedom must be proved in court. In many cases this element is the main object of dispute in court.
- ✦ Trafficking in children (Purchase or Sale of a Child) is criminalized in separate Article, included in a chapter of crimes against child and family. This article doesn't require any abusive influence upon the victim and his freedom violation.

Peculiarities of Lithuanian criminal regulation (possibility to release the victim from liability for crimes committed)



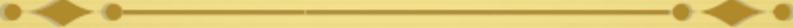
- ✦ Special paragraphs of the articles of Trafficking in Humans (art. 147) and Purchase or Sale of a Child (art. 157) ensure that victims of trafficking may be released from liability if they were directly forced to commit a criminal act themselves under the influence of the crime.

Peculiarities of Lithuanian criminal regulation (competition with crimes related to prostitution)



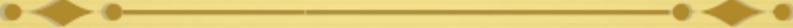
- ✦ In the system of Criminal Code the norms of Trafficking in Humans (art. 147) and Purchase or Sale of a Child (art. 157) compete with articles related to prostitution:
 - ✦ Art. 307. Gaining Profit from Another Person's Prostitution
 - ✦ Art. 308. Involvement in prostitution
- ✦ These articles criminalize both non-violent and violent actions against persons engaged in prostitution, and this creates some difficulties of delimitation with crimes of trafficking in humans and children.

Art. 307. Gaining Profit from Another Person's Prostitution



- ✦ 1. A person who gained profit from another person's prostitution or from procuration for prostitution shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to four years.
- ✦ 2. A person who organises or is in charge of prostitution or transports a person with his consent for prostitution to the Republic of Lithuania or from the Republic of Lithuania shall be punished by imprisonment for a term of up to six years.
- ✦ 3. A person who gains profit from the prostitution of a minor or organises or is in charge of the prostitution of the minor or transports the minor with his consent for prostitution to the Republic of Lithuania or from the Republic of Lithuania shall be punished by imprisonment for a term of two up to eight years.
- ✦ 4. A legal entity shall also be held liable for the acts provided for in this Article.

Art. 308. Involvement in prostitution



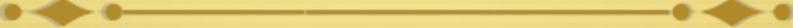
- ✦ 1. A person who involves a person in prostitution shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years.
- ✦ 2. A person who involves in prostitution a person dependent on him financially, subordinate in office or otherwise or involves a person in prostitution by using physical or mental coercion or by deceit or who, in any manner, involves in prostitution a minor shall be punished by imprisonment for a term of two up to seven years.
- ✦ 3. A legal entity shall also be held liable for the acts provided for in this Article.

Peculiarities of Lithuanian criminal regulation (special articles on exploitation and use of forced labour and services)



- ✦ New articles of Criminal Code related to exploitation (Art. 147⁽¹⁾) and use (Art. 147⁽²⁾) of forced labour and services have been adopted.
- ✦ The first article criminalizes the action related to forcing a person into labour.
- ✦ The second article criminalizes an action of a person who used a work or services of forced person, including forced prostitution. The liability for this crime becomes possible if the offender was aware of or should and could be aware of non-voluntary nature of work or services.

Art. 147⁽¹⁾. Exploitation of forced labour and services (Law of 30-06-2012)



- ✦ 1. A person who, by using physical violence or threats or deception or by other means referred in Article 147 unlawfully forces another person to perform a certain work or services including begging,
shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years.
- ✦ 2. A person who commits the act indicated in paragraph 1 of this Article by forcing a person to perform work or services under the conditions of slavery or under other inhuman conditions,
shall be punished by arrest or by imprisonment for a term of up to eight years.
- ✦ 3. A legal entity shall also be held liable for the acts provided for in this Article.

Art. 147⁽²⁾. Use of forced labour and services (Law of 30-06-2012)



- ✦ 1. A person who used a work or services of another person, including prostitution, where the offender is aware of or should and could be aware that this person performs work or services because of the physical violence or threats or deception or other means referred in Article 147 were used against him in a purpose of exploitation, shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two years.
- ✦ 2. A person who commits the act provided for in paragraph 1 of this Article, shall be released from criminal liability where he before the delivery of a notice of suspicion raised against him, voluntarily notifies a law enforcement institution thereof and actively assisted in determining the victim of trafficking in humans (art. 147) or Purchase or Sale of a Child (art. 157) and disclosing any of these crimes.
- ✦ 3. A legal entity shall also be held liable for the acts provided for in this Article.



✦ Thank you for attention