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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**

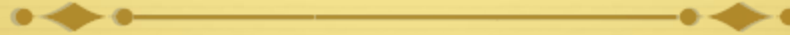


# The Lithuanian national court practice related to human trafficking

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## Some statistics on trafficking in humans



- ✦ In 2012 law enforcement institutions investigated 44 cases of trafficking in humans

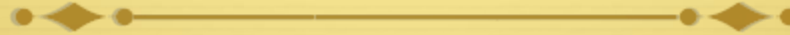
<b>New investigations started:</b>	<b>Persons convicted by courts for trafficking in humans:</b>
in 2009 – 11	in 2009 – 14
in 2010 – 7	in 2010 – 9
in 2011 – 21	in 2011 – 17
in 2012 – 11	in 2012 – 3

## Reasons and problems, which disturb effective and operative interrogation of trafficking cases



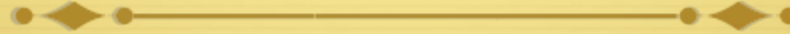
- ✦ Unreliable victims, inconsistent testimony.
- ✦ Many important criminal actions take place in foreign countries.
- ✦ Effective legal defense of suspects and defendants.
- ✦ Traffickers usually apply non-violent modes of recruiting girls for prostitution with a purpose to transfer them to an owner abroad.
- ✦ Courts encounter legal difficulties to justify charges against traffickers due to the lack of proved facts of restraint and abusive influence upon victims.

# The main elements of crime of trafficking in, which need to be proved in Lithuanian court:



- ✦ 1) What action was done against a victim
  - ✦ The need to prove at least one alternative illegal transaction where object is human being: *sale, purchase, otherwise convey, acquirement, recruitment, transportation, keeping in captivity.*
- ✦ 2) Why this action was done
  - ✦ The need to prove purpose of exploitation of a person at least in one alternative sphere: *slavery or practices similar to slavery, prostitution, pornography or other forms of sexual exploitation, forced labour or services, including begging, criminal activities or exploitation, illegal adoption and any other possible sphere of exploitation.*
- ✦ 3) How the action was done (not required in cases of trafficking in children)
  - ✦ The need to prove at least one alternative mean of abusive influence upon the victim violating his personal freedom: *physical violence, threats, depriving of a possibility of resistance, taking advantage of the victim's dependence or vulnerability, resorting to deceit, paying or granting other material benefit to a person who actually has the victim under his control.*

## Traditional theory on violation of personal freedom



- ✦ Traditional criminal law theory follows the opposition to personal freedom (physical freedom and freedom of will) from physical and mental violence
  - ✦ kidnapping,
  - ✦ binding,
  - ✦ locking in the room
  - ✦ intimidation and so on.
- ✦ This theory is not helpful explaining and incriminating crime of trafficking in humans where victims often give their consent to be transferred into sexual exploitation.

## The need of a new theoretical approach on how traffickers can abuse victims and violate their freedom



- ✦ The concept of trafficking in humans highlighted the need for broader interpretation of personal freedom violation, because it is well known that traffickers are able to enslave people, especially young women, by deceptive promises, moral pressure, pushing into debt and other non-violent methods of influencing them.
- ✦ Explaining the mechanism of freedom violation in trafficking in humans the new legal notion was developed in Lithuanian legal literature - *restrictive control over a person*.
- ✦ *Restrictive control over a person* corresponds to the abusive influence upon a victim as an element of general concept of trafficking in humans.

## Absolute and relative control over a person



- ✦ It is essential to know that restrictive control over a person can be absolute and relative (covert).
- ✦ The absolute control over a person can be followed from physical violence, abduction, threats, deception.
- ✦ The relative (covert) control over a person can be followed from dependent or vulnerable position of a person.
- ✦ *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 of Directive 2011/36/EU).*
- ✦ The restrictive control over a person reached in non-violent ways is always grounded by some kind of agreement with a dependent or vulnerable victim.

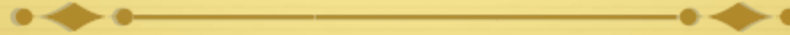


## Proofs of restrictive control in non-violent cases



- ✦ The criminal prosecution institutions in non-violent cases have to look for evidence whether:
  - ✦ victim was pushed into a situation or condition conflicting with human dignity;
  - ✦ deprived of her personal documents;
  - ✦ her social and personal contacts as well as life time were controlled by the traffickers;
  - ✦ victim's consent to be involved into exploitation was given because of deception or hard social circumstances including poverty, deceases, addiction to drugs or alcohol and so on.

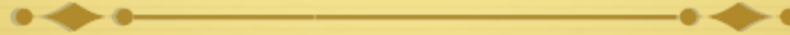
## Presumption is not admissible as a way of proving facts of restraint



- ✦ According to the decision of the Supreme Court of Lithuania (March 20, 2006) action's restrictive nature and opposition to the personal freedom can't be followed from presumption that the victim will inevitably get into restrictive control in the future.
- ✦ It was recognized as an inadmissible argument in criminal case.

# Extract of cassation judgment of Supreme Court of March 20, 2006, No 2K–332/2006.

(Case of selling of a women recruited into prostitution abroad)



- ✦ The sentence was cancelled and the case transferred to a new trial by these arguments:
- ✦ *“Trafficking in humans takes place only in cases where victim’s freedom is restricted... Court of Appeal grounded the fact that in case of successful transaction victim would get into total control of customers by analogical cases practice. This mode of arguing is inadmissible in criminal justice... The information what happens sometimes to the women engaged into prostitution in foreign country is not enough ground to the conclusion that in this case victim’s will was violated”.*

Extract of cassation judgment of Supreme Court of  
October 5, 2010, No 2K-361/2010.  
(Case of selling of a women recruited into prostitution abroad)

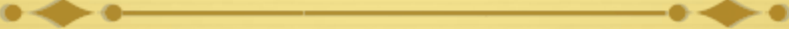
The accusation with trafficking in humans was confirmed by these arguments:

*”It must be recognized that personal freedom is restricted not only when the person is completely deprived of the opportunity to choose a place of residence or behavioral variant, but also when his freedom is partially limited”.*

*“Obviously, being deceived by the nature of the work, victims became effectively controlled, lost part of their opportunities to choose their own location and options of behavior, that is why the court reasonably concluded that the victims' freedom was restricted”.*

# Motivation of abuse of a dependant and vulnerable position of a victim

(Kaunas Regional Court sentence of June 15, 2009)



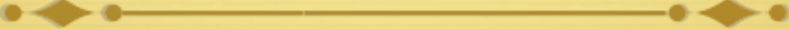
- ✦ The accusation with trafficking in humans was confirmed because of a dependant and vulnerable position of a victim recruited into prostitution abroad. The court motivated this state by these facts:
- ✦ *“There are two brothers and two sisters in the family of the victim , family financial situation is very difficult; because of mental retardation she studied in a special school at Kaunas; she did not work; she gave birth to a son, who, in the absence of conditions for growing children at home, was accommodated in a child’s shelter; the victim claimed that she decided to go London for work because she wanted to help her mother; she was promised a normal work abroad; until the departure the defendant settled a victim at his home controlling her communication with another victim; defendant did not let her visit home when she made such a request; in order to determine the suitability of a victim to prostitution defendant organized her having sex with two males” .*

## Young age and naivety as elements of vulnerability



- ✦ In the last verdicts Lithuanian courts, while motivated facts of abuse of vulnerability, made references to young age and naivety of victims who have believed in unreal promises of traffickers.
- ✦ This means that young age and naivety in Lithuanian court practice are being recognized as possible elements of vulnerability.

## Content of case (1)



- ✦ The Model agency recruited and organized groups of girls to go to the United Arab Emirates for participation at parties in the Palace of sheikh. The girls had to spend time near the pool, drink cocktails, while a girl selected by sheikh as a favorite had to have sex with him. The organizer (owner of the agency) received from the sheikh from 1000 to 1500 U.S. dollars for each girl. After several days of parties the girls had been brought home and paid about 500 US dollars for one trip. 15 trips had been organized and 55 girls trafficked to the sheikh. Only two girls agreed to have status of victim in the case, the others gave testimony as witnesses.
- ✦ The defendants did not accept quilt staying that all girls had voluntarily participated in trips and nobody had abused them. Moreover, the vast majority of girls during the trip did not have any sex with the sheikh.
- ✦ All defendants were sentenced for trafficking in humans (Vilnius Regional Court, November 10, 2008). Appeal and cassation complaint of defendants have been rejected.

Extract from cassation judgment of Supreme Court of May  
25, 2010, No 2K-289/2010  
(court's arguments on abusive nature of trips to United Arab Emirates )



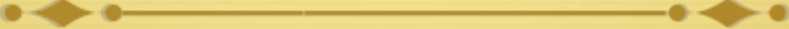
- ✦ *“...Girls were transported to Muslim tradition country where local laws and habits strictly prohibit and condemn prostitution, so the journey can not be regarded as safe. Under the circumstances of the case, found themselves in a foreign country, the girls were controlled and had little choice to disobey R. M. and her accomplices will. Being in the UAE before the departure, girls passports were taken, they were forced to take a degrading examination of possible sexually transmitted diseases - have been inspected by the doctor, had to give blood, get contraceptives. Girls were placed in the wall surrounded house, the gate was locked, so their freedom of movement was restricted. All the girls were very young, the vast majority - minors concealing from their parents the true purpose of travel, so they were vulnerable” .*



## Continuation

- ✦ *“Some of the girls were not informed that they can have sex with the Sheikh, so they have been deceived on purpose of travel, some agreed to go in hope that sheikh would not choose them. Some girls were threatened that if they refuse to go to the UAE they will have to pay for the tickets with 10 000 Lt. Although the trips had been not very long and not all participating girls had been chosen by sheikh, it does not deny the fact that all of them had been transported and trafficked in to sexual exploitation. If sheikh chose the girl, she had to have sex with him. All these facts lead to the conclusion that in a purpose of profiting from girls prostitution methods restricting their freedom and will were used: threats, deceit, abuse of vulnerability” .*

## Content of case (2)



- ✦ M.L., L.D., R.D. and A.P. had been convicted by Siauliai regional court (February 8, 2011) for trafficking in humans incriminating that they had bought J. D. (young woman from countryside) from a person who recruited her for a legal job abroad, then informed her that she is going to be a prostitute, brought her to a hotel where kept her in captivity with a purpose to transfer her to Greece. But the victim has escaped from the hotel and informed the police about action against her.
- ✦ Convicted persons appealed to the Court of Appeals stating that the action done with the consent of the victim, her freedom was not violated. Their appeal was rejected.
- ✦ However, their cassation complaint was partially satisfied, court sentence was cancelled and the case was transferred to a new trial to the Court of Appeal.
- ✦ The Cassation Court found that arguments of defense questioning the facts of keeping the victim in captivity were not properly analyzed and rejected.

# Extract from cassation judgment of Supreme Court of February 6, 2012, No 2K-17/2012.

(court's arguments questioning the fact of keeping the victim in  
captivity)

- ✦ *“... The victim all the time being in the car with the guys and being one, as well as being in the hotel had a working cell phone and was free to make calls, it means defendants did not aim to limit her possibility to keep in touch with the environment. As can be seen from the testimony of the victim, even after a warning regarding the use of the phone it was not taken away from her. The further course of events also implies a reasonable doubt of the victim's restraint. J. D. was repeatedly left alone as well as in the presence of bystanders, who could give her assistance, but she did not apply directly to them and did not show that she needs any help. ... The witness I.M., who at the time was the hotel administrator, also pointed out that several times was in contact with the victim, but she did not say anything, did not ask for help. Attention is drawn to the fact that the victim at the time of event was drunk, recorded drunkenness of 1.55 ppm, it means that the victim used alcohol with A.P. instead of immediately tried to escape or seek the help. It should be noted also that the victim was able to freely walk into toilet while the doors of the hotel corridors were not locked”.*

After a new trial Court of Appeal once again confirmed that defendants were lawfully convicted for trafficking in humans. Their appeal was repeatedly rejected.



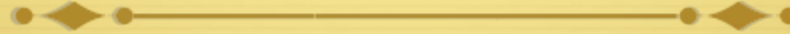
- ✦ Court of Appeal based the new decision both on facts of keeping the victim in restrictive control and abuse of her vulnerability.
- ✦ Extract of judgment of Court of Appeal of Lithuania (June 27, 2012, No 1A-309/2012):
- ✦ *“There is no evidence that J. D. after having learned about the future work in Greece would agree with the proposal. The fact that this message had been unexpected to her follows from the behavior of the victim: she began to cry and explained that she has a small child. ... The court during the questioning found the victim to be naive and trustful. ... The victim during the accident was vulnerable: she was constantly crying, ... she was excited and stressful. The victim was in fact controlled by defendants, both at the way in Siauliai and at the hotel where she was under supervision of A.P. In order to guarantee the transaction he checked whether the victim has a passport and tried to rip it out of her hands... An important consideration is that J. D. against her will was kept in a hotel room, and even when she went to the toilet, A. P. opened the door to the corridor to see when she comes back to the room. Just by chance she managed to escape from the hotel”.*

## Conclusion

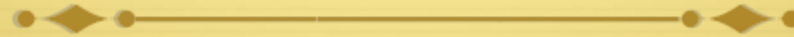


- ✦ The successful incrimination of a crime trafficking in humans becomes possible where accusation is built on facts related with both violent and non-violent abusive influence upon victims.
- ✦ Prosecutors and investigators should pay proper attention to gathering evidence about the vulnerability of the victim. This is a last argument for an abusive nature of the action against the victim.

## There are still no finished cases



- ✦ On illegal transactions at local human markets. Such crimes usually are considered as making profit of prostitution of another person or involvement in prostitution.
- ✦ On trafficking in humans for other form of exploitation than prostitution (forced labour, criminal activity, pornography, etc.)



✦ Thank you for attention