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ANALYSIS OF THE LEGAL STATUS QUO FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS IN SLOVAKIA

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У статті йде мова про торгівлю людьми, яка поширена у всьому світі. Протягом певного часу Словаччину вважали країною, в якій виникла торгівля людьми. Тому Словаччина мала сформуванати систему заходів, що здійснюються в рамках протидії торгівлі людьми. В статті проаналізовано сучасну систему захисту жертв від торгівлі людьми в Словаччині.

Ключові слова: торгівля людьми, державний координатор, жертви торгівлі людьми, підтримка і захист жертв торгівлі людьми, державна програма з боротьби проти торгівлі людьми, акт боротьби проти торгівлі людьми.

В статье идет речь о торговле людьми, которая распространена по всему миру. В течение определенного времени Словакию считали страной, в которой возникла торговля людьми. Поэтому Словакия должна была сформировать систему мероприятий, осуществляемых в рамках противодействия торговле людьми. В статье проанализирована современная система защиты жертв торговли людьми в Словакии.

Ключевые слова: торговля людьми, государственный координатор, жертвы торговли людьми, поддержка и защита жертв торговли людьми, государственная программа по борьбе с торговлей людьми, акт борьбы против торговли людьми.

Human trafficking crosses borders between regions, countries and continents. Taking into account this fact, it is clear that the effort to improve the fight against this unwanted phenomenon requires international cooperation between Member States. This post presents an analysis of the current legal status of the fight against trafficking in human beings in the Slovak Republic in accordance with the rules of the Council of Europe. To make the fight against trafficking in human beings, the authors of the article proposed in the Slovak Republic special legislation aimed at combating trafficking in human beings with an emphasis to deal with the coordination area, but also in the identification of victims of trafficking in human beings and the provision of aid to these victims.

Key words: trafficking in human beings, the national co-ordinator, victim of human trafficking, identification of victims, victim assistance, support and protection of victims of trafficking in human beings, the national program for the fight against trafficking in human beings, the law on the fight against trafficking in human beings.

Council of Europe Convention on action against trafficking in human beings (hereinafter referred to as "the Convention") defines the obligation for the Contracting Parties to the Convention on the adoption of measures for the introduction or strengthening of national coordination between the various bodies responsible for preventing and combating trafficking in human beings. As a first step, to which the Slovak Republic has declared the fight against trafficking in human beings has been the resolution of the Government of the Slovak Republic No. 668 of the day 7. In September 2005, the report on the activities of the Government of the Slovak Republic was adopted, aimed at preventing and combating trafficking in human beings. On the basis of the decision of the Government of the Slovak Republic a national coordinator for the fight against trafficking in human beings was appointed and also the first conceptual material was adopted at the national level in the form of a national action plan to combat trafficking in human beings for the period 2006–2007. Among its primary tasks, this document included creating a mechanism for the management and coordination of activities in the field of combating trafficking in human beings.

For the purpose of the fulfillment of the tasks set out at the end of 2006, an internal regulation of the Ministry of Interior of the Slovak Republic was issued on the establishment of the Expert group in the field of the fight against trafficking in human

beings (hereinafter referred to as "the expert group"). This is a group of professionals, which is a consultative and coordinating body of the national coordinator, addressing the issue pro-actively, the fight against trafficking in human beings at the strategic level and composed of representatives of the relevant ministries, the Office of the Government of the Slovak Republic, the Office of representative Government of the Slovak Republic for Roma communities, the General Prosecution Office of the Slovak Republic, of the Association of towns and municipalities of Slovakia, the International Organization for Migration IOM and representatives of non-governmental organizations in Slovakia. With regard to the functioning of the expert group, the national coordinator decisions are binding on all of its members, and hence for the participating departments, offices, organizations and non-governmental organizations, which, however, is not explicitly expressed in the generally binding regulation.

For this reason, it is necessary to consider the drafting of the Bill, which would set a role for interested not only in the area of coordination, but also in other areas necessary to perform tasks in the fight against trafficking in human beings. In April 2008, the Government of the Slovak Republic approved the national program for the fight against trafficking in human beings for the period 2008–2010 (hereinafter referred to as the "national program"). In terms of the performance of the tasks of the national program, the Ministry of Interior of the Slovak Republic created the law of internal multidisciplinary working groups in the field of the fight against trafficking in human beings, which are aimed at the prevention of trafficking in human beings and to provide comprehensive care for victims of human trafficking and deal with problems arising from the "ad hoc".

In order to ensure a uniform procedure, the internal regulation of the security program for the promotion and the protection of victims of trafficking in human beings (hereinafter referred to as "the program"), was published by the Ministry of Interior of the Slovak Republic in December 2006. It should be noted that the internal management of the Ministry of Interior of the Slovak Republic Act cannot bind other departments to carry out the tasks, therefore, recommends the adoption of a comprehensive legal norm of higher legal force, which ultimately derives from the draft assessment report of GRETA, in order to ensure an effective fight against trafficking in human beings with a multidisciplinary approach, as is apparent from the explanatory report to the Convention. It should also be taken of the extent of the phenomenon of trafficking in human beings, which requires a response and countermeasures to comprehensive and systematic level, which implies the involvement of a wide range of public, private and third sector and their effective coordination, as defined in the current National program for the fight against trafficking in human beings for the years 2011–2014 which was approved by the Government of the Slovak Republic on 16. February 2011.

Measures will be carried out in accordance with the performance of the tasks of the national program to combat trafficking in human beings for the years 2011–2014 and in the framework of the implementation of the analysis of the situation in the area of prostitution and associated demand for sexual services in 2012 and the development of the conceptual material with suggestions for solutions; to implement the research focused on the lack of information concerning the forms of trafficking in human beings; to increase awareness about trafficking in human beings on the demand side, as well as for potential offenders.

The system of aid in material difficulty is used to ensure the prevention of trafficking in human beings in the Slovak Republic, which is a kind of safety net for people with low or absence of income. In Slovakia, there is a wide range of measures, aid policy from the provision of direct financial transfers to increase income (e. g. assistance in material need, State social benefits) through a reduction in expenditure (material in the form of a subsidy for a child, school, provision of services), to support active inclusion measures, direct access to employment, education and active participation in social life. The key is to ensure that income support measures (in particular families with children), promoting access to employment, education and integration into the labour market, access to public services and the development of human capital. The system of social protection (individuals, the family and its members) is ensured in particular through instruments assistance in material need. Within the meaning of the Constitution of the Slovak Republic, every person who is in need, has the right for such assistance, which is essential to ensure the basic living conditions of the above law and it is the constitutional guarantee –

for every citizen. The goal is to provide help in need, which should be in the nature of the preventive measures and temporary solution only for those, whose potential can be activated. The State financially supports families with children within the system of state social support and social benefits of the national recurrent lump.

The provision of benefits is governed by laws which provide the legislative conditions for entitlement to individual benefits, their amount, method and procedure for their payment, including provisions aimed at minimizing the possible use of ineffective funds. According to the Act No 5/2004 Coll. on employment services and on amendments to certain laws, as amended by later regulations (hereinafter referred to as the "law on employment services"), a citizen has a right to access to employment without any restrictions in accordance with the principle of equal treatment in labour relations and similar legal relations established by the anti-discrimination law. Control of illegal work and illegal employment and the penalties, imposed by the Head Office of labour, social and Family Affairs (hereinafter referred to as "headquarters") under the law on employment services and labour inspectorates under the law No 125/2006 Coll. on labour inspection and on the amendment of the law on undeclared work and illegal employment are carried out. Control activities include, inter alia, permission to enter freely at any time into subject to the control of illegal work and illegal employment and workplaces to necessary extent, to enter on private land and communications; to require proof of the identity of the natural person appearing at the workplace of the employer and an explanation of the reason for their presence. With a view to preventing and banning discrimination on the basis of sex, the Government of the Slovak Republic has adopted two strategic materials:

- the national strategy for the prevention and eradication of violence against women and in families;
- the national strategy for gender equality.

Action plans, which were subsequently adopted from these strategic materials, are based on the basic objectives and strategies formulated in specific tasks, including the determination of the responsibility of divisions for their implementation: the national action plan for the prevention and eradication of violence against women; national action plan on gender equality.

The provision of education in any field, from the perspective of the subject orientation, is set out in law No 245/2008 Coll. on the upbringing and education (Education Act) and by the amendment to certain laws, from the perspective of the education they provide, the issue is contained in Act No 317/2009 Coll. on the educational and professional staff, and by amendments to certain laws. According to the Education Act, education in schools and educational establishments may be carried out solely on the basis of exchanges of socio-educational program. In the context of the Education Act, it is possible to distinguish between the State and the school teacher-training program. The State shall determine the content of the training programs of education and training in schools according to the law in order to obtain the necessary competences. These public education programs are published by the Ministry of education, science, research and sport of the Slovak Republic (hereinafter referred to as "the Ministry"). If there was a specific national training program, where it would be possible to include the educational programs in the field of combating trafficking in human beings, according to the Education Act, the scope of the competent central authority of the State Administration intended, within the scope of which the issue belongs to the cooperation with the Ministry. Public education programs are also the starting point for the development of school curricula, the creation and assessment of textbooks, instructional texts and a comprehensive assessment of the results achieved in the framework of the educational process. It is also the key to the content of individual items that make up the content of the lesson plans and curricula for individual schools according to § 9 of the Education Act. The school education program is the starting document, according to which education is carried out in a particular. A creator shall have the right to approve of a particular school curriculum. A tutorial on the fight against trafficking in human beings is not included in the national curriculum, and therefore cannot be included in the school curricula, which are concretization of state educational programs. Teaching-learning process in the field of combating trafficking in human beings, therefore, can be contained only within the curricula of selected specific socio-educational subjects, such as civic education. For institutions which may provide different types of education, an Act of teaching and

professional staff is essential, which distinguishes between the different categories of educational and professional employees. In the framework of teaching the civic education, concerning the fight against trafficking in human beings, teachers play an essential role. They must complete a particular study that focuses on the theme as required by law, or go on in a continuous education, which is voluntary and lies in the systematic acquisition of credits per unit completed in the study program. Just as it has in the educational process – the essential role of pedagogic assistant, or tutors.

An integral part of the problem of trafficking in human beings is the removal of organs. Its legal framework in the conditions of the Slovak Republic is provided for in title II of law no 576/2004 Coll. on health care, services related to the provision of health care and on amendments to certain laws, as amended by later regulations (hereinafter referred to as "the law of health care"). This law laid down all the essential attributes of a legal procedure to remove bodies (in particular the definition of entities which are authorized to undertake procurement, as well as the terms and conditions of the donation). Unauthorized subscription is included in the scope of the criminal law. The case of the health care law provides that the removal of organs (as well as the donation, testing, processing, preservation, storage, transfer or distribution of organs, tissues or cells) may be carried out for the purposes of transplantation, as well as scientific research aims for just such a provider who has issued for these purposes, any authorization that is issued pursuant to the Act of 2004 on 578/ health care providers, health care workers, trade organizations in the health sector and on amendments to certain laws, as amended by later regulations (hereinafter referred to as the "law on providers"). In accordance with the law on health care, it is forbidden to remove and transfer organs, tissues and cells, as well as for the purpose of financial gain or other material benefit. The donation of organs, tissues or cells is voluntary and free of charge. The law clearly lays down the conditions for the care of the donation. Among the measures to facilitate the prevention of the establishment of National Transplant Registry there is a demand that there could be a list of people waiting for a transplant, where there is an order of the medical aspect, and a list of potential donors exclusively. Also there is a legal obligation to notify health care providers of all cases in which they have reasonable grounds for believing, also a legal obligation to notify health care providers of all cases in which they have reasonable grounds to suspect that the damage to the health or death of a person may have the participation of the other person.

In addition to the mentioned general binding rules, the professional guidelines are issued by the Ministry of health of the Slovak Republic and are provided for:

- donation, procurement of human organs from the bodies of the living and deceased donors, the donor testing and transfer of human organs to the recipient;
- transport in connection with the program of organ transplants, tissues, cells, and allocation of organs for transplant purposes;
- the choice of the recipient's body and mapping algorithm of the patients on the waiting list for transplantation.

To prevent demand in relation to avoiding sexual exploitation of children and adolescents, it is necessary to mention also the non-legislative measures, such as the publications concerning the syndrome CAN with an emphasis on how to prevent sexual exploitation of children and adolescents.

The identification of victims of trafficking in human beings

The procedure for the identification of victims of trafficking in human beings in the Czech Republic, as well as their possible inclusion in the program for the promotion and the protection of victims of trafficking in human beings is an essential part of the national reference frame (i. e. the structure of cooperation, within which public authorities fulfill their obligation to protect the human rights of the victims of trafficking, and to coordinate these efforts in strategic partnerships with civil society). The basic aim is to ensure respect for the human rights of victims of trafficking in human beings and the provision of services. Secondary the development of national policies and procedures can help the victims of trafficking through the legalization of their stay, and then edit, for example legal establishment, their compensation and provide protection. The provision of basic human rights and dignity of victims shall be conditional upon their early identification, which is also a condition of their designation as victims. The measures must take into account the fact that the victims of trafficking in human beings often have problems relating to awareness

of the situations in which they are located. Identification of potential victims of trafficking in human beings may be any entity arising from public authorities or non-governmental organizations within the framework of the Slovak Republic and abroad, as well as the victim and their family members through National help lines for victims of human trafficking 0800 800 818. Revealed potential victims are referred to the care of non-governmental organizations or IOM (International Organization for migration) in Slovakia, which initiate the procedure for the identification of potential victims of trafficking in human beings on the basis of the above initiatives through the identification of the questionnaire, the personal record of the client, which is based on the definition of trafficking in human beings. The Protocol to the international Palermo (additional protocol to prevent, suppress and punish trafficking in persons, especially women and children, to the United Nations Convention against transnational organized crime).

The Act of teaching and professional staff provides an effective mechanism for the prevention, which consists of preventive measures in schools and educational establishments, and is carried out by psychologists, school psychologists, pedagogues, social educators, hospitals. The mechanism shall contribute to the early diagnosis of possible disturbances of behavior among children and students, who can become or are victims of trafficking in human beings. Professional staff assists the process of identifying the victims of this serious crime. The identification of victims of trafficking in human beings is also possible in the framework of the curriculum, and it is therefore also important support activities of the teaching staff in the context of education.

A significant obligation in relation to the identification of victims of trafficking in human beings is to notify health care providers under the Act on providers. Prosecutors, investigators or police authority of reasonable grounds are required to notify the damage to the health or death of a person, as well as participation, which might have suspected neglect, cruelty or abuse of a minor or other person, who is not eligible for legal acts or whose legal capacity has been restricted. This obligation covers only a limited part of the issues framed in trafficking in human beings. In addition to the above legal obligations there is a professional guideline issued by the Ministry of health of the Slovak Republic, which prepared a procedure:

- there are health professionals to provide health care to women at violence risk. The procedure is streamlined to acts of gender-based violence, and its result was a physical, sexual or psychological damage figures and women, where there are threats of such acts, coercion, or any suppression of freedom, whether in public or in private life;

- there are health care providers in cases of suspected sexual abuse of persons under eighteen. Guidance is built on the mandatory report of health care providers within the meaning of section 79 (1). 2 of the Act on providers.

It is recommended to adjust the legislation to identify victims of trafficking in human beings in the field of health.

Assistance to victims, the period of recovery and reintegration of victims

Health activities are mainly focused on increasing the level of knowledge for the detection of possible victims of trafficking, as well as the ability to empathetic communication with victims, advisory services, and therapeutic options. For victims of trafficking in human beings, who are the beneficiaries of public health insurance, medical care is provided on the basis of law No 580/2004 Coll. on health insurance and on the amendment of Act No. 95/2002 Coll. on insurance and on amendments to certain laws, as amended by later regulations (hereinafter referred to as the "law about health insurance") under the same conditions as the other policy holders. In case of improper medical treatment of the victims of trafficking in human beings, there is a possibility of an agreement with the health insurance company for rescheduling.

The Slovak Republic is subscribed to Social and legal protection and social custody authority (the "authority" of social and legal protection) in the implementation of measures for the protection of victims of trafficking in human beings, Act No. 305/2005 Coll. on the protection of children and social custody and social and legal protection and on amendments to certain laws (hereinafter referred to as the "law for the protection of social and legal protection"), Act No. 36/2005 Coll. on the family and other applicable legal standards in accordance with international conventions. Measures for protection and social custody of children (hereinafter referred to as "social and legal") shall be carried out for a child, natural person, family, group and community, adult, in particular, through social

work, methods, techniques and procedures appropriate to the knowledge of social sciences and knowledge on the status and the development of socio-pathological phenomena in society. Authorities are active in the provision of social and legal protection of custody kids whose parents are unable or unwilling to discharge their parental rights and obligations, or whose parents abuse them physically, psychologically or sexually. Implementation of social and legal measures for the protection is focused on provision of social counseling and work, which participate in the field programs for assistance to victims of trafficking in human beings and through advisory services provides, in particular, consultancy in the field of psychological treatise services and psychological assistance for the clean-up of the family. Enforcement authority performs the function of a guardian. Authority protection has performance measures, where social and legal protection works closely with the police, courts, prosecution service, school, school facilities, municipalities, higher territorial units, accredited bodies, medical devices, as well as other legal and natural persons operating in the area. From the point of view of social and legal protection we consider performance measures for minor victims of trafficking in human beings to be sufficiently modified, a sufficient amount of legislative instruments must be used in the implementation of the measures for minor victims of trafficking in human beings.

In the field of international child abduction the task of the States parties to the Convention on the civil aspects of international child abduction is to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the country of their habitual residence. In the field of international adoption for the States parties according to the Convention on the protection of children and cooperation in inter-State adoption, one of the main objectives is the assumption of measures to ensure that everything acts in the best interests of a child and the assumption of international respect for their fundamental rights and the prevention of abduction, sale or trafficking of children. The law on social services ensures and declares the fulfillment of needs of trafficking victims in the field of social services, in particular, by ensuring the provision of specific forms of assistance and accommodation. Specifically a dormitory room, shelter, emergency housing are provided for a physical person who is a victim of trafficking and they represent the most appropriate social services for victims of trafficking in human beings as a precaution against dangerous people by ensuring the confidentiality and anonymity of a natural person accommodation. In the context of possible assistance to victims of trafficking in human beings concerning children or pupils in schools and school facilities there are essential provisions of the Education Act and the Act on teaching staff and professional staff, by means of which it is possible to help children or pupils if they are victims of trafficking in human beings. In the framework of the curriculum there are different forms of a specific way of schooling. It is possible to allow individual children education. In addition, if a student was abducted to a foreign country for the purpose of trafficking in human beings, and there are problems with their release to home Member State, the socio-educational process even in another State is possible. An important form of autonomous study, is an individualized study plan that is an individual form of teaching-learning process, which allows and enables students to be engaged in education and, therefore, is a form of assistance to victims. The activity of the special educational establishments (diagnostic centers, re-education centers and medical-education sanatoriums) is an essential form of assistance to victims. Educational and professional staff, their activities can help on the basis of the tasks entrusted to them in the context of education laid down by law in the case of assistance to victims of trafficking in human beings.

The internal legislation of the Ministry of Interior of the Slovak Republic created a Program for support and protection of victims of trafficking in human beings (hereinafter referred to as "The Program"). The Program accomplishes a wide range of assistance for victims of trafficking in human beings, the same for Slovaks and foreigners. The aim of the program is to provide assistance to the victims, to ensure the protection of their basic human rights, freedoms and dignity, and to motivate the victim to witness statements, which makes it easier for law enforcement authorities in the detection and prosecution of the perpetrators of the crime of trafficking in human beings. For the effective and qualified functioning of the program, services provide victims according to their individual needs to conclude contracts with NGOs and the IOM in Bratislava on funding from the State budget. The recovery period under the Convention is seen in the Slovak Republic as a

"recovery", within the meaning of the internal law of the Ministry of Interior of the Slovak Republic and lasts for 90 days. During that period the foreign victim is ensured to get a comprehensive care, including legalization of staying at the territory of the Slovak Republic for a period of at least 90 days. Citizens of the Slovak Republic, as well as foreigners, are granted comprehensive care during the period of the crisis care and recovering time for a period of 90 days. Victims are provided with the comprehensive care throughout the criminal proceedings in the case of a decision on cooperation with law enforcement authorities. After the completion of the criminal proceedings, according to the needs of the provided care during the period of reintegration in the duration of 90 days, if the victim decides not to cooperate with law enforcement agencies in criminal proceedings, they are provided with the comprehensive care of the victim (during the period of 90 days), who is a citizen of the Slovak Republic, and a foreigner is provided during the period of preparation for the return to their country of origin.

Act No. 48/2002 Coll. on the residence of foreigners and on amendments to certain laws (No 220/2010 Coll. full text of the law on foreigners) deals with the permission to the tolerated residence to a maximum of 90 days, which is granted to a foreigner who is also, inter alia, the victim of a crime related to trafficking in human beings, who is at least 18 years old. At the same time, the law also governs the issue of renewal of the authorization to stay for at least for 180 days, which is tolerated and even repeated, if it takes the reason for which the authorization was granted and the presence of foreigners at the territory of the Slovak Republic is necessary for the purposes of criminal proceedings. Authority or the person entrusted with law enforcement by the Ministry of the Interior shall inform the foreigner, having been granted a tolerated residence permit on any programs or projects, whose aim is to enable its integration into the company during the duration of the stay. The Ministry of the Interior may grant permission for permanent residence without fulfilling the conditions laid down in the law on foreigners, if it is necessary for the provision of protection and assistance to witnesses under a special law (Act No. 256/1998 Coll. on the protection of witness in the wording of later regulations). Repatriation and return of victims of trafficking shall be carried out in accordance with the law on foreigners (Act No. 48/2002 Coll. as amended) and the law on asylum (Act No. 480/2002 Coll., as amended). After the entry of a foreigner into the program, the aid is granted for the voluntary return to the country of origin, and mediation assistance service is provided operating in the country of origin. Victims of human trafficking who are citizens or residents of the Slovak Republic whom the usual competent authorities of another Member State identified as victims of trafficking and, subsequently, their repatriation to the Slovak Republic, may apply for inclusion into the program. Reintegration of victims into society is also a subject to the provisions of the internal law of the Ministry of the Interior with respect to the specific needs of the particular victims of human trafficking. Due to the fact that the internal law of the Ministry of Interior of the Slovak Republic is unable to commit to other entities involved in providing assistance to victims of trafficking in human beings, we recommend that you should consider the edit area to fulfill the obligations for the provision of assistance to victims of trafficking in human beings, in the form of the legal act that is the law.

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