The implementation of the non–punishment provision regarding persons in prostitution in Lithuania

Country inputs for the United Nations Special Rapporteur on trafficking in persons, especially women and children, Ms. Siobhán Mullally

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1. **Key issues addressed in the report**

Despite progress being made regarding anti–trafficking policies and practices in Lithuania, local civil society organisations (CSOs) are concerned about the regulation of prostitution which foresees administrative liability for both purchasers of sexual services and persons in prostitution. In tandem with international policy recommendations for Lithuania[[1]](#footnote-1), organisations oppose the following regulation and call State institutions as well as UN Special Rapporteur on trafficking in persons, Ms. Siobhán Mullally, to consider the objectives proposed. There is an urgent need to implement provisions in the national legislation as foreseen in the Resolution on Criminal Liability for the Purchase of Sexual Services[[2]](#footnote-2) *(hereinafter the Resolution)*, namely to ratify the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others *(hereinafter the UN Convention)*, abolish the administrative liability applied for persons in prostitution and prepare a comprehensive reintegration programme with the aim to create conditions to withdraw from sexual exploitation and prostitution. Only after these provisions are entirely established and their implementation is monitored, the country may move towards the better compliance with the non–punishment principle.

1. **Recent legal developments with regards to combatting trafficking in human beings (THB)**

By signing key international treaties against trafficking in human beings (THB), namely, the Palermo protocol[[3]](#footnote-3), Council of Europe Convention on Action against Trafficking in Human Beings[[4]](#footnote-4), The EU Anti-trafficking Directive 2011/36/EU[[5]](#footnote-5) and others, as well as incorporating their provisions into the national legislation, the Republic of Lithuania has secured a status as a country that meets the legal standards for the elimination of trafficking. The definition of the THB provided in the Criminal Code of the Republic of Lithuania under the Article 147[[6]](#footnote-6) corresponds to these international documents, and establishes the notion of non–punishment as follows:

“*3. The victim of the criminal offence provided for in this Article may be released from criminal liability for the criminal offence which (s)he has been directly forced to commit because of the criminal offence provided for in this Article committed against him/her*.”

For the past several years, Lithuania also improved its policy framework, and adopted the National Action Plan against Trafficking in Human Beings (2017–2019)[[7]](#footnote-7) (*hereinafter – the Action Plan*) introducing a set of measures that sought to improve coordination of actions against THB, strengthen prevention, support for victims and persons at risk and build capacities of the frontline staff. The Coordination Commission[[8]](#footnote-8) was established as a responsible coordinating body in the fight against THB and is composed of State, municipal and NGO stakeholders. The national referral mechanism is specified in the Recommendations regarding the Identification of Victims of Trafficking, Criminal Investigations and Interagency Co-operation[[9]](#footnote-9).

The specialised assistance for victims and people at risk, including those involved in sexual exploitation or prostitution, is provided by specialised NGOs in Lithuania. It is important to note that the assistance is provided to every victim (including the presumed ones), and is free of charge to all residents, irrespective of their legal status or their willingness to cooperate with the law enforcement institutions. The draft Law on Assistance to Victims of Crime[[10]](#footnote-10) is currently being submitted and is under consideration. Its adoption will strengthen the support system for victims by further harmonising provisions elaborated in the Directive 2012/29/EU[[11]](#footnote-11) with the national law, and, likely, would formalise victim referral and establish their right to receive comprehensive support.

Despite the positive developments, experts note gaps between the policy and the practice. The Group of Experts on Action against Trafficking in Human Beings (*hereinafter – GRETA*) indicates a non–uniform system of victim identification and referral procedures across the country, and a lack of protection of victims and witnesses which result in their reluctance to cooperate with NGOs or the law enforcement institutions, amongst the others[[12]](#footnote-12).

In the context of the non–punishment provision, GRETA addresses that persons engaged in prostitution who may be victims of THB are imposed administrative offences and not always are identified as victims of trafficking effectively[[13]](#footnote-13). Committee on the Elimination of Discrimination against Women (CEDAW) also advocates for the implementation of measures to reduce demand for prostitution in Lithuania as well as explicitly recommends the abolition criminalisation of women in prostitution[[14]](#footnote-14).

1. **THB for sexual exploitation and prostitution: national legal framework and statistics**

Article 307 and 308 of the Criminal Code[[15]](#footnote-15) in the chapter XLIV “Crimes and Misdemeanours against Morality” foresees legal provisions which criminalise gaining profit from another person's prostitution as well as the involvement of other persons in prostitution. There were 16 pre–trial investigations initiated for THB for sexual exploitation in 2017–2019[[16]](#footnote-16) amounting to 25% of all pre–trial investigations initiated during this period. There were 57 formally identified[[17]](#footnote-17) victims of sexual exploitation whereas the number of human traffickers convicted for this form of crime accounted for 27.

Regarding the matter in question, administrative liability for engagement in prostitution or the use of prostitution services is also provided by the Code of Administrative Offences, Article 487[[18]](#footnote-18). The foreseen administrative offence is from 90 EUR to 140 EUR, while if committed repeatedly, the offence seeks 140 EUR–300 EUR. Pursuant to the Article 487, administrative liability is not applied in cases where the person was financially, professionally, or otherwise dependant or was involved in prostitution using physical, mental coercion or fraud, or was a victim of THB[[19]](#footnote-19).

However, statistics[[20]](#footnote-20) indicate a substantially gendered nature of the “equal penalty” for the prostitution. In the period of 2015–2019, 799 individuals – mostly women – received administrative offences for prostitution (out of those, 543 received penalties repeatedly) while only 104 received administrative offences for the use of prostitution services (11 received offences repeatedly).

1. **Observations regarding prevention and assistance for persons in prostitution**

While there is a lack of systemic data on prostitution in the country, information provided by NGOs for the purpose of this report sheds light on this oftentimes invisible group of persons. As noted, victims of sexual exploitation and prostitution account for a significant proportion of specialised assistance receivers of NGOs[[21]](#footnote-21). They have different educational backgrounds and exhibit a wide variety of vulnerability factors, including childhood violence, sexual abuse and neglect, foster–home living experience as well as low income, unemployment, substance dependences and fragmented family ties, amongst many others[[22]](#footnote-22).

In 2017–2020, online social campaigns, such as “Lithuania Without Prostitution”[[23]](#footnote-23) or “10 Myths of Pornography”[[24]](#footnote-24) took place aimed at dispelling prevailing myths about prostitution and sexual exploitation, amongst many others. There were also other preventive measures such as special events[[25]](#footnote-25) dedicated to the International Anti–Trafficking Day with performances held in several different Lithuanian cities in order raise awareness about THB, including prostitution. Printed materials, such as posters[[26]](#footnote-26), leaflets[[27]](#footnote-27), and video clips[[28]](#footnote-28) have been also widely disseminated to inform both the society and persons at risk on where to seek support.

Additionally, NGOs reported issues of access to public services and prevailing prejudices towards persons in prostitution. While services by the private sector are provided in a rather professional manner, victims at state institutions are often labelled and discriminated against by employing stereotypes and even bullying. Qualified gynaecological assistance provision or the treatment of STDs remain of the greatest challenges so far. Seeking to assist those in need, NGOs often approach several particular specialists who are willing to help[[29]](#footnote-29).

Experiences of persons in prostitution within the law enforcement system vary greatly. While there are instances of law enforcement authorities supporting victims, generally, there is still a systemic lack of protection of victims and witnesses during the pre–trial investigation. The NGOs reported cases of excessive numbers of interviews and cases of female victims still being interviewed by male officers. A qualitative study showed a lack of protection of victims and witnesses who participate in criminal proceedings in Lithuania, including victims of sexual exploitation and prostitution[[30]](#footnote-30).

Overall, Lithuania’s anti–trafficking policy framework is characterised by a lack of specific measures aimed at reducing demand of women and girls in sexual exploitation and prostitution[[31]](#footnote-31). While specialised NGOs implement both preventive measures and trainings for various specialists on the identification of sexual exploitation victims amongst persons in prostitution[[32]](#footnote-32), these efforts remain short-term oriented. While the approval of the Action Plan is a positive development, it still fails to address the disproportionate impact on women and girls within sexual exploitation industry. Increasing immigration from non–EU countries to Lithuania is likely to exacerbate the issue, so adopting gender–sensitive and migrant–specific national measures would be vitally important.

1. **Toward the criminalisation of demand**

The wider debate about the necessity to remove administrative liability from persons in prostitution took place as part of an international conference “Deconstructing the Demand for Sexual Services: Prevention of Exploitation through Prostitution and Sex Trafficking”[[33]](#footnote-33) in June 19–20th, 2014, held at the Lithuanian Parliament. It aimed to suggest strategies on how the State could shift its attention on the regulation of the demand of the purchase of sex rather than the supply.

The debate culminated in the Resolution[[34]](#footnote-34) signed by the Speaker of the Parliament. The Resolution proposed the ratification of the UN Convention, the establishment of an interdepartmental working group to prepare a programme for reintegration of persons in prostitution and submission of amendments to the Code of Administrative Offences regarding the abolition of criminalisation of persons engaged in prostitution. However, no necessary amendments were implemented so far.

The draft laws followed the Resolution only in 2019 which sought to introduce *the Nordic Model* into the national legislation. Members of the Social Democratic fraction of the Parliament, with Ms. Dovilė Šakalienė as one of the initiators, in close cooperation with local anti–trafficking NGOs proposed draft amendments to repeal Article 487 from the Code of Administrative Offences[[35]](#footnote-35) and criminalise only users of persons in prostitution for remuneration[[36]](#footnote-36).

Nevertheless, the Government denied the initiative[[37]](#footnote-37). One of the arguments was that there are existing provisions in the Criminal Code which already foresee criminal liability for purchase of sex provided by persons engaged in prostitution as a direct cause of physical violence, threats, fraud, and other coercive acts. References were also made to persons who are voluntary engaged in prostitution, and that the use of their services for remuneration cannot objectively be regarded as an act which would result in the criminal proceedings against “sex purchasers”. It was also ruled that once administrative liability for persons in prostitution is removed, the legal vacuum would follow, meaning the abolition of any legal grounds to consider engagement in prostitution unlawful, yet it would not be legally regulated either. Finally, concerns were expressed that the proposed regulation would undermine the system of moral values in which prostitution is seen as violating universally accepted moral norms.

Though the new political coalition formed after the national 2020 elections encourages new discussions about the issue, NGOs working in the field of fight and prevention against THB feel the need to encourage faster and more efficient action on implementing non–punishment principle in the national legislation and its enforcement.

1. **Conclusions**

Hence several conclusions may be drawn. First, the country’s approach to prostitution remains problematic due to the supposedly effective criminalisation of human trafficking and exploitation while at the same time retaining the right to apply administrative offences to those exploited. Second, national statistics reveal that administrative offences do not withdraw persons from prostitution, but, on the contrary, lead to financial instability which in turn might increase their vulnerabilities. Third, the numbers demonstrate not only gendered, but power–related inequalities coded in the act of criminalisation of persons in prostitution, where (mostly) women get entrapped between, on the one hand, the law enforcement and, on the other, the “sex purchaser”. Fourth, challenges in organising and providing public services to persons in prostitution create additional boundaries for them to completely withdraw from it.

As there are relatively few tools applied in practice to identify THB victims amongst persons in prostitution, we state that efforts to combat human trafficking as well as to protect best interests of victims and people at risk are insufficient. The country suffers from a lack of specific measures aimed at preventing and protecting women and girls from exploitation of various forms, and, as a result, does not fully comply with the non–punishment provision.

The current role of the State institutions on the matter in question seemed to be characterised by a limited dialogue with NGOs working in the anti–trafficking field as well as signs of moral patronage and victim blaming. Therefore, CSOs call the State to take a proactive role in initiating the long–awaited amendments as foreseen in the Resolution, and invite the UN Special Rapporteur on trafficking in persons, Ms. Siobhán Mullally, to consider Lithuania’s case as one requiring urgent attention.

1. Group of experts on action against trafficking in human beings (GRETA) (2019), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania, GRETA 2019(18), available at: <https://rm.coe.int/greta-2019-08-fgr-lithuania-en/1680950076>; Committee on the Elimination of Discrimination against Women (CEDAW) (2019), Concluding observations on the sixth periodic report of Lithuania, available at: <https://digitallibrary.un.org/record/3840062/files/CEDAW_C_LTU_CO_6-EN.pdf>; [↑](#footnote-ref-1)
2. Seimas of the Republic of Lithuania (2014), the Resolution on Criminal Liability for the Purchase of Sexual Services, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/30d9786089b211e495dc9901227533ee?jfwid=-jccos5i6n>; [↑](#footnote-ref-2)
3. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the

   United Nations Convention against Transnational Organized Crime (came into force on the 25th of December, 2003); [↑](#footnote-ref-3)
4. Council of Europe Convention on Action against Trafficking in Human Beings (came into force on the 1st of November, 2012); [↑](#footnote-ref-4)
5. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA; [↑](#footnote-ref-5)
6. Seimas of the Republic of Lithuania (2000), Law on the Approval and Entry into force of the Criminal Code, 26 September 2000, no. VIII-1986, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/28b18041843311e89188e16a6495e98c?jfwid=-g0zrz3g06>; [↑](#footnote-ref-6)
7. Minister of the Interior of the Republic of Lithuania (2016), Order on the Adoption of the National Action Plan against Trafficking in Human Beings for 2017-2019, 29 August 2016, no. 1V-598, available at: <https://www.e-tar.lt/portal/lt/legalAct/5b99fd306ddc11e6a014b8463e530a88>; [↑](#footnote-ref-7)
8. Minister of the Interior of the Republic of Lithuania (2020), Dėl Lietuvos Respublikos vidaus reikalų ministro 2016 m. rugsėjo 26 d. įsakymo Nr. 1V-673 „Dėl Kovos su prekyba žmonėmis koordinavimo komisijos personalinės sudėties ir kovos su prekyba žmonėmis koordinavimo komisijos veikloje dalyvaujančių ministerijų atstovų darbo grupės personalinės sudėties patvirtinimo“ pakeitimo, 3rd of February, no 1V-89, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/29097a1246c511ea9b3585dbd527d9e8>; [↑](#footnote-ref-8)
9. Prosecutor General, the Minister of the Interior, the Minister of Social Security and Labour (2015), Order on the Approval of Recommendations regarding the Identification of Victims of Trafficking, Criminal Investigations and Interagency Cooperation, no. I-327/1V-1015/A1-758, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/7a3026a0a8ae11e59010bea026bdb259>; [↑](#footnote-ref-9)
10. Seimas of the Republic of Lithuania (2004), Law on Assistance to Victims of Crime, no. 20-2005, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/1195d0104f2011eaa1dfa55695c2be13?positionInSearchResults=3&searchModelUUID=03204042-bfb3-4afc-9b34-731ca0f3851e>; [↑](#footnote-ref-10)
11. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; [↑](#footnote-ref-11)
12. Group of experts on action against trafficking in human beings (GRETA) (2019), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania, GRETA 2019(18), available at: <https://rm.coe.int/greta-2019-08-fgr-lithuania-en/1680950076>; [↑](#footnote-ref-12)
13. *ibid.* [↑](#footnote-ref-13)
14. Committee on the Elimination of Discrimination against Women (CEDAW) (2019), Concluding observations on the sixth periodic report of Lithuania, available at: <https://digitallibrary.un.org/record/3840062/files/CEDAW_C_LTU_CO_6-EN.pdf>; [↑](#footnote-ref-14)
15. Seimas of the Republic of Lithuania (2000), Law on the Approval and Entry into force of the Criminal Code, 26 September 2000, no. VIII-1986, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/28b18041843311e89188e16a6495e98c?jfwid=-g0zrz3g06>; [↑](#footnote-ref-15)
16. Ministry of the Interior of the Republic of Lithuania, Counter-trafficking situation in Lithuania in 2017–2019, available at: <https://vrm.lrv.lt/lt/veiklos-sritys/kova-su-prekyba-zmonemis>; [↑](#footnote-ref-16)
17. In this context, formally identified victims refer to persons who have been formally identified as victims of trafficking in human beings by the relevant formal authority; [↑](#footnote-ref-17)
18. Seimas of the Republic of Lithuania (2015), The Code of Administrative Offences of the Republic of Lithuania, no. XII-1869, available at: <https://www.e-tar.lt/portal/lt/legalAct/4ebe66c0262311e5bf92d6af3f6a2e8b>; [↑](#footnote-ref-18)
19. Unofficial translation; [↑](#footnote-ref-19)
20. Seimas of the Republic of Lithuania (2019), The explanatory note on the draft laws no. XIIIP-4099, XIIIP-4100, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/9bcd9c80fa4d11e985ccb0561410d874?jfwid=-fy7rw46ri>; [↑](#footnote-ref-20)
21. For instance, NGO [Centre Against Human Trafficking and Exploitation](http://anti-trafficking.lt/en/pradzia-english/) provided specialised assistance for 300 individuals in 2019, out of those were 56 victims of prostitution; 61 victims of sexual violence and 29 victims of pornography; NGO [Klaipėda Social and Psychological Support Centre](https://www.moteriai.lt/) provided specialised assistance for 52 individuals in 2017–2019, the largest share were 29 victims of sexual exploitation; NGO [Caritas](https://www.caritas.lt/news/prekyba-zmonemis) provided specialised assistance for 17 victims in 2017 (8 victims of forced prostitution); 21 victim in 2018 (9 victims of forced prostitution) and 22 victims each year in 2019 and 2020 (with 9 and 8 victims of forced prostitution respectively). Hereinafter the information was provided by NGOs for the purpose of this report; [↑](#footnote-ref-21)
22. Information was provided by NGOs for the purpose of this report; [↑](#footnote-ref-22)
23. Social campaign took place online from 23rd of August to 16th of September, 2018 (organised by NGO Klaipėda Social and Psychological Support Centre); [↑](#footnote-ref-23)
24. Social campaign took place online from September to November, 2019 with the aim to raise societal awareness about the harm of pornography (organised by NGO Klaipėda Social and Psychological Support Centre); [↑](#footnote-ref-24)
25. On the International Anti-Trafficking Day 16th of October, 2020, [joint performance](https://www.youtube.com/watch?v=PIoeBF6tzkc&feature=youtu.be&fbclid=IwAR3pzyjHjlkx9opllYeIWcUw2vSjRda-zpr70v49UqTytYWQKt_0g-7kf_k) in 5 different Lithuanian cities took place in order to increase societal awareness about THB, including sexual exploitation (organised by National Association Against Trafficking in Human Beings in cooperation with the Police and other public institutions); [↑](#footnote-ref-25)
26. For instance, bus shelter outdoor advertisements „[Are You a Supporter of Prostitution?](https://pavyzdys.site/wp-content/uploads/2020/08/1-1.pdf)“ and „[Have You Visited Gentlemen‘s Club?](https://pavyzdys.site/wp-content/uploads/2021/01/vyrai300-01-scaled.jpg)“ have been prepared 2020-2021 (prepared by NGO Centre Against Human Trafficking and Exploitation); [↑](#footnote-ref-26)
27. For instance, leaflets “[I’m Not a Commodity](https://pavyzdys.site/wp-content/uploads/2020/08/5-1.pdf)” and “[Woman Is Not An Object](https://pavyzdys.site/wp-content/uploads/2020/08/7-1.pdf)” were prepared aimed at informing potential victims of and persons at risk about THB/where to seek help, including sexual exploitation and prostitution; [similar leaflet](https://pavyzdys.site/wp-content/uploads/2020/08/4-1.pdf) was prepared in Russian (prepared by NGO Centre Against Human Trafficking and Exploitation); [↑](#footnote-ref-27)
28. For instance, video clip „[Trafficking in Human Beings. Sham Marriage](https://www.youtube.com/watch?v=Q_l4m_5uu6g)“ and article „[How One Becomes a Victim of Sham Marriage](https://www.bernardinai.lt/2017-10-18-kaip-tampama-fiktyvios-santuokos-auka/)“ were prepared in 2017, and also victim–narratives such as „[Rimantė‘s Story](https://vimeo.com/304310753/7e920521f2)“ (Initiated by NGO Caritas); [↑](#footnote-ref-28)
29. Information was provided by NGOs for the purpose of this report; [↑](#footnote-ref-29)
30. Karalius, Mažvydas (2020) Ar saugu siekti teisingumo? Poveikis nukentėjusiems nuo prekybos žmonėmis *(Is it Safe to Seek Justice? Experiences of Retaliation Among Victims of Trafficking in Human Beings)*, available at: <https://pavyzdys.site/wp-content/uploads/2020/08/2-1.pdf>; [↑](#footnote-ref-30)
31. Committee on the Elimination of Discrimination against Women (CEDAW) (2019), Concluding observations on the sixth periodic report of Lithuania, available at: <https://digitallibrary.un.org/record/3840062/files/CEDAW_C_LTU_CO_6-EN.pdf>; [↑](#footnote-ref-31)
32. For instance, a number of seminars, discussions and conferences for the law enforcement as well as for a broader public (academic community etc.) have been organised by NGO Centre Against Human Trafficking and Exploitation, NGO Klaipėda Social and Psychological Support Centre and others; [↑](#footnote-ref-32)
33. The conference was initiated by NGO Klaipėda Social and Psychological Support Centre in cooperation with STOPTRAFFICK.IE; [↑](#footnote-ref-33)
34. Seimas of the Republic of Lithuania (2014), the Resolution on Criminal Liability for the Purchase of Sexual Services, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/30d9786089b211e495dc9901227533ee?jfwid=-jccos5i6n>; [↑](#footnote-ref-34)
35. Seimas of the Republic of Lithuania (2019), Law on Repealing Article no. 487 from the Code of Administrative Offences of the Republic of Lithuania [unofficial translation], available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/e31714f0fa4c11e985ccb0561410d874?jfwid=-98b2vxsiw>; [↑](#footnote-ref-35)
36. Seimas of the Republic of Lithuania (2019), Law on Supplementing the Criminal Code of the Republic of Lithuania with the Article 147(3) [unofficial translation], available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/35ed1860fa4c11e985ccb0561410d874?jfwid=-98b2vxsiw>; [↑](#footnote-ref-36)
37. The Government of the Republic of Lithuania (2020) Conclusion Regarding the Law on Supplementing the Criminal Code of the Republic of Lithuania with the Article 147(3), no. XIIIP-4099 and Law on Repealing Article no. 487 from the Code of Administrative Offences of the Republic of Lithuania, no. XIIIP-4100 [unofficial translation], available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/28a7ea954bd211ea8690e43fd2ea13e3?jfwid=-fy7rw46ri>. [↑](#footnote-ref-37)