

Legal Remedies for Human Trafficking in the United Kingdom and Lithuania

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Introduction

Human trafficking in Europe tends to follow a consistent flow: people from Eastern Europe are primarily trafficked to more economically developed Western European countries. The examination of statistical data and media reports reveals that the registered trafficking victim rates are higher in the United Kingdom than Lithuania; in terms of typical human trafficking routes between these states, Lithuania is primarily a source country whereas the United Kingdom is a country of destination (exploitation).¹ By ratifying a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime the United Kingdom and Lithuania demonstrated their recognition of the necessity and importance of the fight against the international criminal phenomenon of human trafficking.² However, a comprehensive response

¹ See, e.g., EUROPOL, *Situation Report Trafficking in human beings in the EU*, the Hague, February 2016, Document Ref. No: 765175, at p. 16; EUROSTAT Statistical working papers, *Trafficking in human beings*, 2015 edition, at pp. 11, 12, 23, 34; EUROSTAT Methodologies and Working papers, *Trafficking in human beings*, 2013 edition, at p. 31; U.S. State Department, *Trafficking in Persons Report 2015*, at pp. 225, 349; UK National Crime Agency, *Human Trafficking: National Referral Mechanism Statistics – October to December 2013* at p. 4; Katherine R. Jolluck, *Combating the Trafficking of Women in Eastern Europe*, CDDRL Stanford working paper, at p. 2.; Also see, e.g., media reports: <http://www.theguardian.com/commentisfree/2015/aug/11/lithuanian-slaves-anti-trafficking-modern-slavery-act-human-rights-crime> (March 3, 2016, 4:33PM.); <http://www.bbc.com/news/uk-24571971> (March 3, 2016, 4:33PM); <http://www.standard.co.uk/news/crime/jail-for-pair-who-trafficked-lithuanian-women-into-britain-and-sold-them-for-sham-marriages-a2740731.html> (March 3, 2016, 4:35PM); <http://www.dailymail.co.uk/news/article-2662179/Woman-trafficked-vulnerable-Lithuanian-immigrants-UK-making-work-illegally-charity-business-jailed-three-years.html> (March 3, 2016, 4:36PM); <http://www.anti-trafficking.lt/docs/bogus%20charity.pdf> (March 3, 2016, 4:37PM).

² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, adopted in November 15, 2000, entered into force May 31, 2004, 2237 UNTS 319. See ratification status at:

to human trafficking is not only about the prevention, suppression and punishment, but also the protection of victims. An effective domestic legal system of remedies for human trafficking is crucial for the restoration of victims' lives.

UN Basic Principles on the Right to an Effective Remedy to Victims of Human Trafficking includes a variety of legal remedies that should be available to victims of human trafficking in all states.³ This paper primarily focuses on how the current legal framework and policies in the United Kingdom and Lithuania correspond to the requirements of principles 10, 11 and 12 (compensation to victims of human trafficking) and principles 7(d), 9 (d) (the right to a reflection and recovery period as well as an award of a temporary or permanent residence status to victims of human trafficking).⁴ This paper demonstrates that both countries have made efforts to prohibit human trafficking and establish opportunities for victims to pursue compensation and enjoy the right to remain in the country. However, in terms of compensation, laws in both countries neither provide the types of moral damages that should be reimbursed, nor the criteria to calculate them.⁵ With regard to the human trafficking victim's right to temporarily reside in the United Kingdom or Lithuania, the enjoyment of this right is contingent on a victim's willingness to cooperate with law enforcement.

The United Kingdom and the Republic of Lithuania are member states of the European Union and state parties to the European Convention of Human Rights as well to the Convention

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en (March 5, 2016, 2:30PM).

³ UN Human Rights Council, Basic principles on the right to an effective remedy for victims of trafficking in persons, Doc. no. A/HRC/26/18, adopted in May 2, 2014.

⁴ *Ibid.*, at pp. 14-15. Because of the limited scope of this paper, differences in legislation in Scotland and Northern Ireland are not taken into consideration when presenting the UK legal framework on human trafficking.

⁵ Moral damages is a term used in European legal landscape. Moral damages include physical, mental and emotional pain and suffering of an injured person and (or) his/her relatives. See e.g., <http://www.xprimm.ro/download/cna-2013/Ulrich-WERWIGK.pdf> (April 13, 2016, 9:30PM).

on Action against Trafficking in Human Beings.⁶ Membership in the EU and the Council of Europe creates an international obligation for the UK and Lithuania to harmonize their domestic legislation with “European standards” with respect to remedies for victims of human trafficking. Therefore, each part of the paper briefly introduces relevant guidelines under European Union and European human rights law that affect the legislative framework on human trafficking in the UK and Lithuania.

In order to understand who has the status of a human trafficking victim and therefore is entitled to legal remedies in the UK and Lithuania, the first part of this paper looks at national laws that define human trafficking. In addition, this part briefly introduces the guidelines for criminalization of human trafficking under European human rights law and European Union law. The second part discusses monetary remedies for human trafficking with a focus on the victim’s right to compensation in the UK and Lithuania. Regarding the fulfilling of the victim’s right to compensation this part briefly looks at the regulation of confiscation of assets of a convicted trafficker and corporate criminal liability for human trafficking. The third part of this paper looks at the non-monetary remedy – a human trafficking victim’s right to remain in the country of exploitation. This part describes the human trafficking victim’s right to remain in Lithuania but primarily focuses on the problems regarding immigration remedies in the UK, which, as noted above, is statistically more likely to be the country of exploitation. Also, domestic provisions on the right to a reflection period in the UK and Lithuania are briefly introduced in the final part of this paper.

⁶ The Convention for the Protection of Human Rights and Fundamental Freedoms, often referred to as “the European Convention on Human Rights”, adopted in November 4, 1950, came into force in September 3, 1953, 213 UNTS 222; Council of Europe Convention on Action against Trafficking in Human Beings, adopted May 16, 2005, entered into force February 1, 2008, 197 CETS. The United Kingdom (hereinafter referred to as the UK), the Republic of Lithuania (hereinafter referred to as Lithuania) and European Union (hereinafter – EU).

I. Criminalization of human trafficking in the United Kingdom and Lithuania

A. International and regional guidelines for criminalization of human trafficking

As mentioned previously, the UK and Lithuania are state parties to the Palermo Protocol, which provides an internationally recognized definition of human trafficking consisting of three basic elements.⁷ Article 5 of the Palermo Protocol requires state parties to adopt legislative and other measures implementing this three-pronged definition.⁸

In *Rantsev v. Cyprus and Russia* the European Court of Human Rights observed that each state party to the European Convention on Human Rights has a positive obligation stemming from article 4 of the Convention to penalize trafficking in persons.⁹ Chapter IV of the European Convention on Action against Trafficking in persons imposes an obligation on each state party to establish an adequate response to human trafficking through substantive criminal law system.¹⁰ The European Convention enlists a number of guidelines that require states to criminalize not only human trafficking per se but also the use of human trafficking victims services and aiding and abetting human trafficking. It furthermore establishes corporate criminal liability for human

⁷ *Supra* note 2, at art. 3(a), ““Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” The Palermo definition consists of three basic components – act, means and purpose.

⁸ *Supra* note 2, at art. 5.

⁹ In this case the Court emphasized that a state party to the European Convention of Human Rights has a positive obligation to establish “legislative and administrative framework to prohibit and punish trafficking.” *See*, ECtHR case of *Rantsev v. Cyprus and Russia*, (Application no. 25965/04), judgement January 7, 2010, at paras. 285, 290, 291. Also see, Roza Pati, *States’ Positive Obligations with Respect to Human Trafficking: The European Court of Human Right Breaks New Ground in Rantsev v. Cyprus & Russia*, Bos. U. Int’l L. Journal, Vol. 29, No. 1, 80, at 134 (2011). The duty to protect the rights of human trafficking victims entails not only the obligation to adopt domestic criminal laws that prohibit and penalize human trafficking but to ensure that the whole legal “machinery” is construed for the best protection of victims’ rights and this requires states to revise or adopt measures including but not limited to migration, work conditions, health.

¹⁰ *Supra* note 6. *See*, chapter IV.

trafficking and other offenses.¹¹ The European Convention also provides a definition of a human trafficking victim. According to article 4(e), a human trafficking victim is any natural person that is subject to human trafficking as defined by this Convention.¹²

EU Directive 2011/36/EU lays down the minimum rules with regard to the definition of criminal offenses relating to human trafficking, prevention of it and protection of its victims.¹³ The definition of human trafficking provided by the Directive 2011/36/EU is slightly broader than the Palermo and European Convention definition in that it criminalizes an additional act, namely, “the exchange or transfer of control over” trafficked persons.¹⁴ The Directive also establishes two additional forms of exploitation – exploitation of criminal activities and begging - that EU member states must make punishable.¹⁵

¹¹ *Supra* note 6, at Chapter IV. First, the Convention requires member states to ensure that a conduct of human trafficking as described by article 4 of this Convention will be established as a criminal offense. The definition of human trafficking provided by this Convention essentially reproduced the Palermo definition of trafficking in persons. Second, Convention encourages member states to consider criminalizing the use of services of victim of human trafficking. In other words, the demand for services in commercial sex industry, forced labour, slavery and other fields provided by victim of human trafficking should be criminalized. The term “use of services” is designed to include the criminalization of a conduct of clients when they obtain services or acquire human organs knowingly from a victim of human trafficking as well as criminalize the operation and ownership of the businesses that use trafficked workers. Third, according to the Convention states parties shall criminalize attempt, aiding or abetting the commission of human trafficking crime as well as acts relating to travel or identity documents with intent to facilitate or enable trafficking in persons, for example, forging a visa or destroying a passport. Fourth, states parties to the Convention are required to envisage criminal liability for legal persons when a natural person commits a crime of human trafficking for the benefit of that legal person. Having regard that economic inducement is often inherent to human trafficking crime and that trafficking in persons is considered as one of the most lucrative black market businesses, the latter provision is progressive because it constitutes a deterrent effect. Fifth, the Convention establishes “non-punishment provision” according to which victims shall not be subject to prosecution and punishment for illegal activities that they were compelled to do as a result of being trafficked.

¹² *Supra* note 6, at art. 4(e).

¹³ Council of the European Union, 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, 15 April 2011, OJ L. 101/1-101/11, at art. 1 (April 4, 2011).

¹⁴ *Ibid.*, at art. 2(1).

¹⁵ *Supra* note 13, at art. 2(3).

B. Laws prohibiting human trafficking in the United Kingdom and Lithuania

On the 26th of March in 2015, the Parliament of the UK adopted the Modern Slavery Act which prohibits modern slavery and human trafficking, defines offenses that constitute human trafficking, and establishes the provisions regarding prevention of this crime and protection of its victims.¹⁶ According to the Act, human trafficking is “an arrangement or facilitation of the travel of another person with a view to the victim’s exploitation.”¹⁷ Under this Act exploitation shall mean slavery, servitude, forced or compulsory labour, sexual exploitation, removal of organs or other forms of exploitation where a person is induced by force, threats or deception to provide services, benefits or enable another to acquire benefits or securing services from children and vulnerable persons.¹⁸ It is noteworthy that the human trafficking definition in this Act does not expressly list any of the prohibited means to achieve victim’s consent. According to the Act consent to travel is irrelevant no matter if a person is an adult or a child.¹⁹ Unlike international anti-trafficking treaties to which the UK is a state party, the Modern Slavery Act does not only envision *the purpose element* but also establishes the *knowledge element* – a person is responsible for human

¹⁶ The UK Modern Slavery Act 2015, adopted in March 26, 2015, came into force in October 29, 2015. Modern Slavery Act 2015 can be viewed as UK’s legislative response to the obligation to transpose EU Directive 2011 provisions to national legal system, *see*, Explanatory notes, at para. 5 (Background), at <http://www.legislation.gov.uk/ukpga/2015/30/notes/division/3> (March 3, 2016, 2:40 PM).

Modern Slavery Act can also be viewed as a consolidation of previous offences relating to the crime of human trafficking and slavery. Prior to the enactment of Modern Slavery act human trafficking was prohibited through the Sexual Offences Act 2003 and the Asylum and Immigration Act 2004 which were amended through the Protection of Freedoms Act 2012, *see* section 2, para. 23 of Explanatory notes, at: <http://www.legislation.gov.uk/ukpga/2015/30/notes/division/5/1> (March 3, 2016, 5:00PM).

¹⁷ *Ibid.*, at section 2 (1), (2), (3), (4), (5). According to part 1 section 2(3) arrangement or facilitation means recruiting, transporting or transferring, harbouring or receiving, or transferring or exchanging control over the person. According to the Act, the “travel” element means arriving in, or entering, any country, departing from any country, travelling within any country. The inclusion of the travel element in the human trafficking definition is misleading because it has a connotation to movement which is not a crucial aspect of human trafficking.

¹⁸ *Supra* note 16, at section 3 (32), (33) of Explanatory notes. Modern Slavery Act refers to the Sexual Offences Act 2003 according to which sexual exploitation involves rape, sexual assault, prostitution and child pornography. In respect of trafficking for the removal of organs, the Act also refers to the Human Tissue Act 2004.

¹⁹ *Supra* note 16, at section 2 (2).

trafficking not only when the person has an intent to exploit another person but also when the person “knows or ought to know” that another person will be exploited by a third party.²⁰

Unlike in the UK, in Lithuania there is no separate law that comprehensively addresses the issue of human trafficking and enlists remedies available to victims of human trafficking. However, in Lithuania human trafficking is prohibited under the Criminal Code.²¹ Article 147 prohibiting human trafficking was last amended in 2012 and is the result of implementation of the 2011 EU Directive. The Lithuanian definition of human trafficking follows the international three-element definition of human trafficking that includes act, means and purpose elements. However, the current Lithuanian definition is not a pure reproduction of the European or an international definition of human trafficking. This is because it establishes the “alternate knowledge element” whereby a person’s responsibility for human trafficking is not limited to situations in which the person had the purpose to exploit another person, but also applies in situations where a person *was aware of* such exploitation.

Traffickers are subject to a stricter criminal liability when the crime is committed against two or more victims or through participation in an organised group, or when the offender endangers the life of the victim or is seeking to acquire the victim’s organ, tissue or cells or when the crime was committed by a public official in the performance of his duty.²² Unlike the

²⁰ *Supra* note 16, at section 2 (4) (a) and (b).

²¹ Criminal Code of the Republic of Lithuania, adopted in September 26, 2000, came into force in May 1, 2003. Article 147 part 1 of the Criminal Code prescribes that a person commits an offense of human trafficking if the person *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 control, where the offender is aware of or seeks, irrespectively of person’s consent, to exploit this person in slavery or practices similar to slavery, prostitution, pornography or other forms of sexual exploitation, forced labour and services, including forced begging, exploitation of criminal activities and other forms of exploitation.* Translation by the author of this paper.

²² *Ibid.*, at art. 147 part 2. Stricter criminal liability for human trafficking manifests in the harsher form of criminal penalty. A person is subject to a stricter criminal liability also when he or she is aware that the victim’s organ, tissue or cells will be removed.

Modern Slavery Act in the UK, the Criminal Code of Lithuania explicitly establishes corporate criminal liability for human trafficking.²³

Exploitation under the laws in both states is contemplated as an outcome of human trafficking, and both countries also agree on what constitutes exploitation. However, the Modern Slavery Act, unlike the Criminal Code of Lithuania, does not explicitly mention exploitation of another victim's criminal activities.²⁴ The UK definition of human trafficking is also different from Lithuania's in that it does not enlist any of the prohibited means to reach victim's consent.

II. Compensation for human trafficking victims in the UK and Lithuania

A. International obligation to provide compensation to victims of human trafficking

Article 6(6) of the Palermo Protocol and the UN basic principles on the right to an effective remedy to victims of human trafficking require that states establish opportunities for human trafficking victims to pursue compensation in their respective domestic legal systems.²⁵

The European Convention on Action against Trafficking in Human Beings imposes an obligation to “adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law.”²⁶ EU Directive 2011/36/EU requires EU members states to ensure that human trafficking victims’ as victims of violent crimes have access to existing compensation mechanisms.²⁷

²³ *Supra* note 21, at art. 147 part 4.

²⁴ The Modern Slavery Act establishes that the victim can be induced to “provide services of any kind” which, according to explanatory notes, can include “forcing a person to engage in activities such as begging or shop theft. It is not necessary for this conduct to be a criminal offence”, *see*, Explanatory notes part 1, section 3(34).

²⁵ *Supra* note 2, at art. 6(6) and, *supra* note 3, at pp. 14-15.

²⁶ *Supra* note 6, at art 15(4).

²⁷ *Supra* note 13, at art. 17.

B. Compensation for victims of human trafficking in the UK

In terms of monetary remedies, victims of human trafficking in the UK are entitled to reparations. The Modern Slavery Act establishes the power of a court to make reparation orders.²⁸ Under the Act, victims of human trafficking should be compensated for any harm that they suffered because of the human trafficking crime.²⁹ In determining the appropriate amount of compensation, the court is required to take into consideration the evidence and any representations made by or on behalf of the person or the prosecutor, and the offender's means; furthermore the total amount of compensation must not exceed the amount the offender has to pay under the confiscation order.³⁰

The Explanatory report indicates that this specific statutory compensation order will enable courts to apply compensation order to victims more extensively than before when compensation orders were issued in accordance with the Powers of Criminal Courts (Sentencing) Act 2000.³¹ Group of Experts on Action against Trafficking in Human Beings observed that under sections 130-132 of the Powers of the Criminal Courts Act, application of compensation order was dependent on the request of prosecutor's office acting on behalf of a trafficking victim.³² Anti-Slavery International has noted that lack of awareness on the part of law enforcement and prosecutors about the existing legal avenues for pursuing compensation, underestimation of the importance of compensation led to failure to request a court to apply

²⁸ *Supra* note 16, at part 1, section 8.

²⁹ *Supra* note 16, at part 1, section 9(1).

³⁰ *Supra* note 16, part 1, section 9(3), (4), (5).

³¹ *Supra* note 16, at part 1, section 8(48) of Explanatory notes, *see also*, the Powers of Criminal Courts (Sentencing) Act 2000, at <http://www.legislation.gov.uk/ukpga/2000/6/section/130> (March 10, 2016, 4:30PM).

³² Group of Experts on Action against Trafficking in Human Beings (hereinafter - GRETA) is a body that is mandated to monitor the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom*, at p. 68 (Strasbourg, September 12, 2012); *see also*, *Guide to Legal Remedies for Victims of Trafficking for Labour Exploitation*, 2014, at p. 9.

compensation order.³³ Incorporation of compensation orders within the discretionary court power under the Modern Slavery Act may increase the application of this monetary remedy to victims of human trafficking.

It can be noted that unlike international documents, the UK Modern Slavery Act does not list categories of damages and costs for which a victim can be reimbursed.³⁴ Lack of specificity, with regard to the forms of damages that a trafficking victim can claim compensation for, might increase a risk of defense arguing that a victim is not entitled to this type of compensation. However, since this Act was enacted in 2015 and is comparatively new, there are no statistics available on the application of this remedy in the UK human trafficking case-law.

The Modern Slavery Act provision on confiscation of assets is essential to ensure the right to compensation for victims of human trafficking. The Modern Slavery Act amended the Proceeds of Crime Act 2002 by adding an offense of human trafficking to the list of offenses for which the Crown Court may order confiscation of assets of convicted trafficker if “there are reasonable grounds to believe that he is living off crime will be required to account for his assets, and will have them confiscated to the extent that he is unable to account for their lawful origin.”³⁵ Therefore Modern Slavery Act should be read in conjunction with Proceeds of Crime

³³ Janice Lam and Klara Skrivankova Anti-Slavery International 2009, *Opportunities and Obstacles: ensuring access to compensation for trafficked persons in the UK*, at pp. 26-31. Anti-Slavery International indicated that compensation was an ineffective remedy for trafficked persons in the UK for a number of other reasons including convict’s lack of financial resources to award compensation, difficulties experienced by judiciary with respect to calculation of compensation in complicated trafficking scenarios (e.g., multiple victims, psychological and physical rather than financial harm experienced by victims) or lack of accounting skills possessed by judges complicate the approximation of amount payable to victims as compensation.

³⁴ *Supra* note 3, at part 11. UN Basic principles on the right to an effective remedy for victims of human trafficking, identifies the forms of compensation that victims should be compensated for : damages for physical or mental harm, damages for lost opportunities, reimbursement of costs like transportation, housing, payment for material damages and loss of earnings, non-material damages, reimbursement of legal fees, medical services, psychological or psychiatric treatment *etc.*

³⁵ *Supra* note 16, at part 1 section 7 and section 7(46) of the Explanatory Notes.

Act which enables courts to award compensation to victim of human trafficking from the confiscated assets.³⁶

Other compensation avenues for victims of human trafficking in the UK include filing a civil lawsuit, and applying to the Criminal Injuries Compensation Authority. Victims of human trafficking can also file a claim to the Employment Tribunal.³⁷

The very first case concerning civil liability for human trafficking in the UK is the recent case in which a British company, as well as its director and secretary, were taken to court by the alleged victims of human trafficking for labour exploitation.³⁸ This case involves six Lithuanian men that were allegedly trafficked to the UK and forced to work in the chicken catching business operated by a British company. The UK High Court decision in this case is still pending. However, if the Court delivers an affirmative decision declaring a British company liable for modern slavery, this case will create a significant precedent. More victims of human trafficking will be empowered to pursue compensation from companies that are held responsible for human trafficking.

Although the Modern Slavery Act does not explicitly establish corporate criminal liability for human trafficking, legal persons can be held criminally liable for human trafficking by existing principles of criminal liability of legal persons under the UK law. For example, corporate criminal liability is established in the Sexual Offences Act 2003, the Serious Crime Act 2007 and the Asylum and Immigration Act 2004.³⁹ As noted above, victims of human trafficking are entitled to receive compensation from the person who was convicted of human

³⁶ Proceeds of Crime Act, adopted in July 24, 2002, at section 13(6) and, also *see*, schedule 2 of the Proceeds of Crime Act.

³⁷ *Supra* note 32, a guide, at pp. 45-100. Also *see, supra* note 31, GRETA report, at p. 68.

³⁸ *See* media report, at <https://www.leighday.co.uk/News/2015/August-2015/British-company-sued-in-landmark-modern-slavery-ca> (March 10, 2016, 8:30PM). Five out of six Lithuanian men were identified as human trafficking victims by National Crime Agency's UK Human Trafficking Centre. Subject to humiliation and physical violence they were forced to work long hours without an adequate pay.

³⁹ *Supra* note 32, GRETA report, at p. 73.

trafficking crime. If a legal person is convicted of human trafficking, victims can sue a company for damages or a court may apply the compensation order payable from the budget of that company. Accountability of legal persons for human trafficking is crucial to secure victims' financial interest. Application of corporate criminal liability will empower victims of human trafficking to seek compensation in cases where a natural person (trafficker) has no means to compensate because profit gained from the exploitation of the trafficking victim was transferred to the ownership of the legal person that the perpetrator actually operates.

C. Compensation for victims of human trafficking in Lithuania

As noted above there is no law that specifically lists remedies available to victims of human trafficking in Lithuania. However, in terms of trafficking victim's right to compensation, general principles of criminal law apply. According to article 69 part 1 of the Criminal Code, a court shall order compensation for pecuniary damage when this damage has been caused to a person, property or the natural environment as a result of a crime or misdemeanor.⁴⁰ Unlike the UK Act, the Criminal Code of Lithuania does not give the court the power to order the compensation for non-pecuniary (non-monetary) damages like suffering, emotional distress and pain experienced by a human trafficking victim.

Another avenue for compensation (for both monetary and moral damage) to victims of human trafficking is the right to file a civil complaint in a criminal case under the rules of the Code of Criminal Procedure.⁴¹ The Code of Criminal Procedure also establishes an obligation for a prosecutor to bring a civil action in a criminal case in which a criminal offence causes

⁴⁰ *Supra* note 21, at art. 69.

⁴¹ The Criminal Procedure Code, adopted on March 14, 2002, came into force on May 1, 2003. According to art. 109 of the Criminal Procedure Code, a person who suffered material or moral damage as a result of a crime, has a right to file a civil claim against the suspect or an accused person in the criminal procedure.

damages to a person who, because of his/her minor age, illness, dependency upon the accused or any other reason, is incapable of protecting his/her lawful interests in a trial.⁴² According to this statutory provision, a civil claimant or a prosecutor has the burden to prove the amount of losses suffered as a result of human trafficking. If the court delivers the judgement of conviction pursuant to evidence relating to validity of the civil claim and amount thereof, the court shall satisfy – in full or in part - the civil claim or dismiss the claim.⁴³ It is noteworthy that the jurisprudence of the Supreme Court of Lithuania does not enlist a set of criteria to assess the proper amount of moral damages to be awarded to victims of human trafficking. However, the Civil Code provides the factors that a court shall take into consideration when determining the proper amount of compensation for non-pecuniary damages in general.⁴⁴ According to the Civil Code, in determining the amount for moral damage, a court shall consider the consequences of the damage, the mode of culpability and the financial situation of the actor, the amount of the monetary damage and the principles of good faith, proportionality and reasonability.⁴⁵

Human trafficking case-law in Lithuania demonstrates that courts satisfy civil claims for moral damage inconsistently. For example, the Supreme Court of Lithuania recently approved the decision of a district court that declared three traffickers jointly liable for the monetary and moral damage suffered by two out of four victims who were trafficked to Denmark for prostitution.⁴⁶ One victim was awarded monetary damages in the amount of 233.72 EUR (258.59

⁴² *Ibid.*, at art. 117.

⁴³ *Supra* note 41, at art. 115 part 1.

⁴⁴ The Civil Code, adopted on July 18, 2000, came into force on September 6, 2000, at art. 6. 205.

⁴⁵ *Ibid.*

⁴⁶ The ruling of the Supreme Court of Lithuania in a criminal case no. 2K-43-942/2016, January 6, 2016. In this case four Lithuanian women were trafficked to the Kingdom of Denmark where they were forced to engage in prostitution. Two of the four women knew that they would have to provide sexual services in Denmark but they were deceived about the working conditions and remuneration. The other two women did not know they would have to engage in prostitution. The traffickers also abused women's position of vulnerability (all the women faced economic hardship), held them under surveillance, restricted the freedom of movement and used threats. See *also*, Panevezys Circuit Court ruling in a criminal case no. 1-59-72/2012, June 6, 2012.

USD) and moral damages in the amount of 6371.64 EUR (7 049.59 USD), and the other victim recovered 291.65 EUR (330 USD) for monetary damages and 5 792.40 EUR (6 553.91 USD) for moral damages.⁴⁷ In another case the Supreme Court of Lithuania approved the decision of a trial court that convicted a woman who trafficked over fifty women (over thirty of them were underage) to the United Arab Emirates where they, if selected by a sheikh, had to provide him sexual services.⁴⁸ One of the victims filed a civil complaint in a criminal proceeding claiming 72 063.86 EUR (81 523.59) for moral damages, alleging that she was a minor when she was sexually exploited and that that resulted in psychological problems and discontinuance of her education.⁴⁹ However, she was ultimately awarded only 2882.55 EUR (3,260.88 USD) for non-monetary damages. In the latter case the compensation granted for moral damages was two times smaller than in the previous case despite the fact that the victim was a minor and the perpetrators were convicted of trafficking more than fifty women, whereas in the previous case, only four adult women were trafficked.

The award of damages through a civil action in criminal procedure is partly flawed because the enjoyment of the trafficking victim's right to compensation is dependent on the victim's and prosecutor's willingness and efforts to prove the damage. The absence of a statutory provision empowering court to award moral damages for victims of human trafficking may result in the failure to ensure the effective right to compensation to some human trafficking victims. For example, in the above mentioned case of four women that were trafficked to Denmark to engage in prostitution, only two victims filed a civil lawsuit in the criminal case. The other two

⁴⁷ *Ibid.*

⁴⁸ The ruling of the Supreme Court of the Republic of Lithuania in criminal case no. 2K-289/2010, May 25, 2010. In this case the woman who was the director of a modeling agency by means of deceit, abuse of vulnerability, use of threat within the period of one year trafficked over 50 women to the United Arab Emirates where they had to provide sexual services to sheikh. The trafficker received 1000 – 1500 USD for each woman that was transferred to sheikh as a result making over 60 000 USD criminal revenue.

⁴⁹ *Ibid.*

women that were not active in pursuing compensation and did not initiate civil action in the criminal proceedings were not awarded any kind of compensation.⁵⁰

According to the Code of Criminal procedure dismissal of the civil claim by the judgment in a criminal case, deprives the person of the right to bring the same civil action in accordance with the civil procedure. If a civil action is dismissed under civil procedure, the person is deprived of the right to bring the same civil action in accordance with the criminal procedure.⁵¹ In cases where the court delivers the judgment of acquittal, it leaves the civil action unconsidered.⁵² A person who fails to bring a civil action in a criminal case and if the civil action is not brought by a prosecutor or if the civil claim was left unconsidered because of an acquittal, the person is entitled to file a civil complaint in accordance with the rules of civil procedure.⁵³

The Law on Compensation for Damage Caused by Violent Crimes establishes compensation for the monetary and non-monetary damages caused by violent crimes.⁵⁴ A person may seek compensation from the Fund for Victims of Violent Crimes after the first instance court decision, in which court awards damages, comes into force.⁵⁵ Reading this Law in conjunction with the Criminal Code, victims of human trafficking are considered to be victims of a violent crime.⁵⁶ The act of the ministry of justice also places the crime of trafficking in persons into the category of violent crimes, as a result, human trafficking victims are entitled to seek

⁵⁰ Panevezys Circuit Court ruling in a criminal case no. 1-21-366/2014, April 7, 2014. Also *see*, Klaipeda Circuit Court ruling in a criminal case no. 1-21-380-2014, March 6, 2014 and Kaunas Circuit Court ruling in a criminal case no. 1-158-508/12, November 13, 2012. In the latter cases an identified victims of human trafficking were not compensated for the harm suffered because they did not file a civil lawsuit in criminal proceedings, the courts and prosecutors did not take an active role in ensuring compensation either.

⁵¹ *Supra* note 41, at art. 112 part. 4. However, it is noteworthy that if the civil claim is dismissed, the person retains the right of appeal in both criminal and civil procedure, *see*, art. 312 part 1 of the Code of Criminal Procedure.

⁵² *Supra* note 41, at art. 115 part 3(2).

⁵³ *Supra* note 41, at art. 112 part 1. Also *see*, arts. 6.250 ; 6.263(2) of the Civil Code of the Republic of Lithuania.

⁵⁴ The Law of the Republic of Lithuania on Compensation of Damage Caused by Violent Crimes, adopted on June 30, 2005, at art. 1(2).

⁵⁵ *Ibid*, at art. 3(1).

⁵⁶ According to art. 2(1) of the Law on Compensation of Damage Caused by Violent Crimes, crimes against human liberty fall within the scope of a violent crime and human trafficking is classified as a crime against human liberty under the Criminal Code.

compensation from the Fund for victims of violent crimes.⁵⁷ A victim of human trafficking is entitled to be awarded compensation from the Fund in the amount that is prescribed in the court decision, however, this amount cannot exceed the maximum amount allowed under the statute.⁵⁸ The calculation of the maximum amount of compensation to be paid to victims of violent crimes is based on the algorithm that includes minimal living standard and a statutory coefficient.⁵⁹ According to this statutory compensation algorithm, if there are no aggravating circumstances, a victim of human trafficking may receive maximum 2280 EUR (2543.66 USD) for monetary damage and 3040 EUR (3391.54 USD) for moral damage.

The Criminal Code of the Republic of Lithuania allows not only confiscation of assets but also extended confiscation which strengthens the protection of human trafficking victim's financial interest.⁶⁰ Confiscated property is considered property of the state, but according to the Code of Civil Procedure, a victim may seek compensation from the confiscated property if the convict has no other means to compensate the victim.⁶¹

⁵⁷ The Ministry of Justice of the Republic of Lithuania, The List of Violent Crimes that Cause Damage which shall be Compensated, No. 1R-88, adopted on March 20, 2009, at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=340044&p_query=D%EBI%20smurtini%F8%20nusikaltim%F8%2C%20d%EBI%20kuri%F8%20padaryta%20FEala%20kompensuojama%2C%20s%E0ra%F0o%20patvrtinimo&p_tr2=2 (March 16, 2016, 10:05 PM).

⁵⁸ *Supra* note 54, at art. 6(2).

⁵⁹ *Supra* note 54, at art. 7. The Law on Compensation for Damage Caused by Violent Crimes provides that the amount of compensation equals to the minimal living standard multiplied by a statutory coefficient. Statutory coefficient depends on the crime severity level, for example, the coefficient is higher when a serious injury on victim's health was inflicted. MLS in Lithuania is 38 EUR, and the statutory coefficient for monetary damage is 60, for non-monetary damage – 80.

⁶⁰ *Supra* note 21, at arts. 72 and 72². According to the Criminal Code provisions on Extended Confiscation, a court shall seize the property which is subject to confiscation but has been transferred to another person (natural or legal). For example, the property is transferred to convict's family members or relatives or to a company in which the convict holds an executive office or holds shares of not less than 50 per cent *etc.*

⁶¹ The Code of Civil Procedure of the Republic of Lithuania, adopted on February 28, 2002, came into force on April 6, 2002, at art. 755(2).

III. Human Trafficking Victims' Right to Remain

A. International and regional guidelines for the human trafficking victim's right to remain

The UN Basic principles on the right to an effective remedy to victims of human trafficking encompass a variety of guidelines for non-monetary remedies that states are recommended to follow in order to ensure the protection of human trafficking victims' rights. Victims of international human trafficking, as opposed to internal human trafficking, may face certain risks associated with the return to a country of origin. It is crucial that another – non monetary remedy – a temporary or permanent resident status - be granted in the country of destination (exploitation) in order to secure the enjoyment of the right to compensation for an international victim of human trafficking and mitigate the risk of being re-trafficked, especially when there is a higher risk of revictimization in the country of origin. The UN Basic principles provide that victims of human trafficking must be provided a temporary or permanent residence status on “such grounds as the inability of States to guarantee that return is safe for victims of trafficking in persons and/or their families, respect for the principle of non-refoulement, the risk of re-trafficking and the risk of reprisals.”⁶² The UN Basic principles also indicate that the victim's repatriation to the country of residence should be voluntary if applicable.⁶³ With regard to the temporary residence status, the UN Basic principles establish a reflection and recovery period.⁶⁴ The UN document also highlights that access to remedies (including access to non-monetary remedies like the right to temporary or permanent residence status) must not be made “dependent upon their capacity or willingness to cooperate in legal proceedings.”⁶⁵

⁶² *Supra* note 3, at 9(d); 17(b).

⁶³ *Supra* note 3, at 9(c).

⁶⁴ *Supra* note 3, at 7(d).

⁶⁵ *Supra* note 3, at 7(i).

The trafficking victim's right to temporary and permanent residence status is also enshrined in the European legal framework. For example, articles 13, 14 and 16 of the European Convention on Action against Trafficking in Human Beings places obligations on states parties to the Convention to ensure safe and preferably voluntary repatriation, to provide trafficking victims with a reflection and recovery period of at least 30 days and, if a victim satisfies certain criteria, issue a residence permit.⁶⁶ The EU directives also establish member states duties with regard to residence permits to victims of human trafficking that are third-country nationals, also guarantee the right to a recovery and reflection period.⁶⁷ For example, the Council Directive 2004/81/EC stipulates that victims of human trafficking that are third-country nationals must be granted a residence permit for at least six months and must not be subjected to any expulsion order. Instead – victims are entitled to have access to the labour market and education, legal, medical and psychological aid, translation and interpreting services.⁶⁸

B. Human trafficking victims' right to remain in the UK

GRETA observes that in the UK the right to the reflection and recovery period and the length of it are not defined by law, but instead have “been given effect through policy guidance

⁶⁶ *Supra* note 6. According to the art. 14 part 1 of the Convention on Action against Trafficking in Human Beings, there are two situations in which a victim of human trafficking may be granted a residence permit:

“a) the competent authority considers that their stay is necessary owing to their personal situation;
b) the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.”

⁶⁷ *Supra* note 13; also *see*, arts. 1, 3, 6, 8 of the Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities; *also see*, art. 7 of the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

⁶⁸ *Ibid.*, at preamble parts 13, 16 of Council Directive 2004/81/EC and arts. 7, 8(3), 9. Initially, the UK opted out of this Directive but in 2011 the government of the UK made a decision to opt in, *see* preamble part 21 and <http://www.airecentre.org/pages/implementation-by-the-uk-of-eu-directive-201136-on-preventing-and-combating-trafficking.html> (March 20, 2016, 10:40PM).

for the Competent Authorities.”⁶⁹ The Human Trafficking Centre under the National Crime Agency is a competent authority that grants a 45-day reflection and recovery period to victims of human trafficking.⁷⁰ The decision to grant the reflection and recovery period is made if there are “reasonable grounds” that a person is a victim of human trafficking under the definition of the Council of Europe Convention.⁷¹

In terms of the immigration remedies, a human trafficking victim in the UK may apply for a temporary residence permit.⁷² Temporary residence permit to victims of human trafficking is not defined by law but flows from the policies of the competent authority - UK Home Office.⁷³ A temporary residence permit is granted on the basis of either the victim’s personal situation or the victim’s cooperation with police, or may be granted to victims that pursue compensation.⁷⁴ A victim may be entitled to reside in the UK temporarily if her/his “personal circumstances are compelling.”⁷⁵ These circumstances are normally associated with a victim’s need to complete the course of medical treatment.⁷⁶ When a victim decides to cooperate in the legal proceedings, police request that a victim be awarded a leave to remain. The length of the residence is usually dependent on the duration of criminal investigation and may be extended by the request of

⁶⁹ *Supra* note 32 (GRETA report), at p. 66.

⁷⁰ At <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism> (March 20, 2016, 10:40PM), also *see, supra* note 32 (UK Guide to Legal Remedies), at p. 4. If a person is a national of a third-country, the case is referred to another competent authority – the Home Office UK Visas and Immigration Department.

⁷¹ *See* p. 3, at <http://www.nationalcrimeagency.gov.uk/publications/210-ukhtc-nrm-statistics-oct-dec-2013/file> (March 20, 2016, 10:40PM). Trained specialists have 5 days to make this decision. They apply the test “I suspect but cannot prove..” in conjunction with the opinion of a “reasonable person” and having regard to the information available, there were reasonable grounds to believe that the person was trafficked.

⁷² *Supra* note 32 (GRETA report), at pp. 66, 67.

⁷³ *See* Home Office, Victims of Modern Slavery: Competent Authority guidance, at p. 96, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/488171/Competent_Authority_Draft_guidance_v2.0_EXT_clean.pdf (March 20, 2016, 10:40PM).

⁷⁴ *Ibid.*, at p. 68.

⁷⁵ *Supra* note 73, at p. 67. A conclusive decision that a person is a victim of human trafficking must be made before granting this immigration remedy.

⁷⁶ *Supra* note 73, at p. 75. Also *see, supra* note 32 (GRETA report), at p. 66.

police.⁷⁷ A victim is also eligible for temporary residence in the UK if he or she filed a civil lawsuit against trafficker and if a set of factors related to the civil complaint are considered to require his or her presence in the UK.⁷⁸ A residence permit is granted for a period of minimum of 12 months, and not more than 30 months, however, the specific duration depends on the individual case.⁷⁹

Under the UK Modern Slavery Act, overseas domestic workers who were identified as victims of human trafficking may be granted a leave to remain in the United Kingdom for a period of no less than six months.⁸⁰ According to the Explanatory Notes, the Act requires the state to adopt immigration rules that would protect a person who comes to work as a domestic worker in a private household in the UK under an Overseas Domestic Worker visa.⁸¹ This new provision in the UK Modern Slavery Act can be viewed as a response to the regulatory gap in the UK immigration framework. The previous framework facilitated the abuse of the vulnerability of the third-country nationals who came to the UK under the Overseas Domestic Worker visa which did not allow them to change employers and resulted in cases where people afraid of losing the legal immigration status in the UK were exploited in domestic servitude.⁸²

⁷⁷ *Supra* note 32 (GRETA report), at p. 67

⁷⁸ *Supra* note 73 at p. 75. In determination to grant a right to remain, Home Office should take into consideration “the type of compensation being sought; the grounds of the claim; how credible the claim is; the likely length of the claim, and whether the person needs to be physically in the UK for the duration of their claim - in some instances it may be more appropriate to facilitate return to the UK nearer to the hearing date or to arrange video conferencing facilities.”

⁷⁹ *Supra* note 73, at, p. 78.

⁸⁰ *Supra* note 16, at part 5, section 53 (1), (3), (4).

⁸¹ *Supra* note 16, at part 5, section 53(248). Explanatory Notes inform that “The leave would allow the victim to work as a domestic worker in a private household and to change employer; further conditions of such leave are to be set out in Immigration Rules.”

⁸² *Supra* note 32 (GRETA report), at p. 32. GRETA notes that domestic servitude is one of the most common forms of exploitation that human trafficking victims are subjected in the UK and “the fact that without the right to change employer, migrant domestic workers are more vulnerable to trafficking.” GRETA referred to the NGOs concern that “the overseas domestic worker system”, that came into force in April of 2012, increased the risk of trafficking for the purpose of domestic servitude. This system prevented domestic workers from reporting the abuse because ‘losing’ employer would lead to the illegal status in the UK.

However, these immigration remedies are not relevant to EU nationals. According to the Directive 2004/38/EC, “Union citizens should have the right of residence in the host Member State for a period not exceeding three months without being subject to any conditions or any formalities other than the requirement to hold a valid identity card or passport, without prejudice.”⁸³ Union citizens are entitled to reside for more than three months if they are workers or self-employed persons in the host Member State, students or have sufficient resources to support themselves and their family members.⁸⁴

Regarding long-term residence, victims of human trafficking may seek asylum in the UK. After a positive conclusive decision is made in the National Referral Mechanism, a victim can apply for asylum.⁸⁵ However, a positive conclusive decision does not guarantee that a person is granted an asylee status.⁸⁶ There is a spectrum of issues related to the decision making in asylum procedures. First, GRETA observes that there is a risk of conflict in decision making because the UK Visas and Immigration has authority over both - the human trafficking victim identification decision-making (for non-EU nationals) and asylum claim proceedings.⁸⁷ Because of the different standards of proof in these two procedures, a decision in one procedure may prejudice a decision in the other.⁸⁸ Second, GRETA indicates that potential victims of human trafficking in the National Referral Mechanism are not provided with the information on the possibility of claiming asylum.⁸⁹

⁸³ *Supra* note 67 (Directive 2004/38/EC), at part (9).

⁸⁴ *Ibid.*, at art. 7.

⁸⁵ In regular asylum claims screening procedure a person who seeks asylum can be identified as human trafficking victim and then referred to National Referral Mechanism, see p. 16, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467434/Review_of_the_National_Referral_Mechanism_for_victims_of_human_trafficking.pdf (March 20, 2016, 10:40PM). Also *see, supra* note 3 (GRETA report), at p. 34.

⁸⁶ *Supra* note 1 (TIP report), at p. 351.

⁸⁷ *Supra* note 32 (GRETA report), at p. 52.

⁸⁸ *Supra* note 32 (GRETA report), at p. 52.

⁸⁹ *Supra* note 32 (GRETA report), at p. 70.

A too generous policy for the immigration remedies to human trafficking victims may have a collateral effect on the security of national borders. There were several sex trafficking cases brought to the ECtHR against the UK. The cases included persons that were trafficked from less economically developed countries like Albania and Uganda who applied for legal residence in the United Kingdom. *L.R. v. United Kingdom* is a case about the Albanian national who was allegedly kidnapped in Italy and forced into sex work at a night club in the United Kingdom.⁹⁰ A non-governmental organization “Advice on Individual Rights in Europe,” publicized information that the United Kingdom authorities failed to convict traffickers in this case.⁹¹ However, ECtHR issued decision which struck this application since there was a friendly settlement reached between the parties and the victim was granted the status of refugee in the United Kingdom.⁹² In *M. v. United Kingdom*, the applicant was Ugandan national that was trafficked to the United Kingdom for the purpose of forced prostitution.⁹³ ECtHR unanimously decided to strike this application, on ground that the applicant was safe from the risk of re-trafficking in Uganda since the United Kingdom granted three years leave to remain in the country and the friendly settlement between the parties was consistent with respect for human rights.⁹⁴ In another case, - *F.A. v. the United Kingdom*, the alleged sex trafficking victim who was a Ghanaian national was seeking assylum, and she claimed that United Kingdom had a

⁹⁰ ECtHR case, *L.R. v. United Kingdom*, Fourth Section Decision (Application no. 49113/09), June 14, 2011.

⁹¹ See, e.g., <http://www.airecentre.org/pages/human-rights-litigation-human-trafficking-37.html> (March 26,2016, 11:11 PM).

⁹² *Ibid.*, see, “The law”.

⁹³ ECtHR case, *M. v. United Kingdom*, Fourth Section Decision, as rectified on January 29, 2010 (Application no. 16081/08), see, Facts.

⁹⁴ *Ibid.*, see, the “facts” and “the law”.

positive obligation to ensure her legal residence in the United Kingdom.⁹⁵ The ECtHR also rejected this application because of the non-exhaustion of domestic remedies.⁹⁶

These examples illustrate a problematic dimension pertinent to human trafficking cases – national security concerns relating to immigration. Anne T. Gallagher notes that trafficking can be looked at as “the Basis of a Claim for Refugee Status” and recalls that people “leave their countries because of poverty, environmental degradation, conflict, persecution, or lack of opportunity for a decent life.”⁹⁷ Vladislava Stoyanova, refers to the “dichotomy” of human trafficking and human smuggling and observes that in practice it is difficult to distinguish victims of trafficking and illegal immigrants.⁹⁸ Mary Bosworth invokes the example of the United Kingdom and observes that foreigners including victims of human trafficking are put in the same category as “economic migrants” and are seen to be “risky and dangerous”, and as a threat to “social cohesion.”⁹⁹

C. The right to remain in Lithuania

The Law on the Legal Status of Foreign Nationals in Lithuania contains provisions regarding the residence status of a victim of human trafficking who is a national of a foreign country and not a citizen of the EU.¹⁰⁰ Article 49¹ of the Law establishes that a foreign national, who is a victim of human trafficking, and who cooperates with the investigating institution or a

⁹⁵ ECtHR, *F.A. v. the United Kingdom*, (Application no. 20658/11), fourth section decision, September 10, 2013, at paras. 9, 10, 44.

⁹⁶ *Ibid.*, at paras. 56, 57.

⁹⁷ ANNE T. GALLAGHER, *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING*, at pp. 199, 207.

⁹⁸ Vladislava Stoyanova, *Complementary Protection for Victims of Human Trafficking under the European Convention on Human Rights*, *Goettingen J. of Int'l L.* 3, 2, 777, at 781-783 (2011).

⁹⁹ Mary Bosworth, *Immigration detention in Britain*, in *HUMAN TRAFFICKING*, 159-177, at 171 (Maggy Lee, ed. 2007).

¹⁰⁰ The Law on the legal status of foreign citizens in Lithuania, adopted on April 29, 2004. The law was amended to incorporate the requirements of the EU Council Directive 2004/81/EC that concern the residence status of third-country nationals.

court in a fight against human trafficking, may be granted a temporary residence permit.¹⁰¹ According to the law, the permit to reside in Lithuania is issued for six months and is renewable.¹⁰² It is noteworthy that this provision contradicts the UN Basic principles, because it denies access to a remedy to victim that is unwilling to cooperate in legal proceedings.

The only legal ground for a human trafficking victim to reside in Lithuania permanently is to obtain the status of a refugee.¹⁰³ The Department of Migration is the institution that decides if a person satisfies certain criteria and can be granted the status of a refugee.¹⁰⁴ The Law on the Legal Status of Foreign Nationals in Lithuania provides that a person who has “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”¹⁰⁵

According to article 130 of the Law on the Legal Status of Foreign Nationals in Lithuania, a victim of human trafficking is entitled to a reflection period, which is designed to provide time for the victim to decide if he or she is willing to cooperate with law enforcement.¹⁰⁶ The government of Lithuania passed a resolution that establishes substantive and procedural

¹⁰¹ *Ibid.* Translated from Lithuanian by the author of this paper.

¹⁰² *Supra* note 100, at art. 49¹ part. 2.

¹⁰³ *Supra* note 100, at art. 53 part. 1(7) and art. 3 part 4. The Law provides that a refugee is entitled to seek for a 5 years residence permit that is issued by Migration department and can be renewed.

¹⁰⁴ *Supra* note 100, at art. 80.

¹⁰⁵ *Supra* note 100, at art. 86. This provision reproduces the Refugee Convention definition of a refugee, *see*, Convention relating to the Status of Refugees Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950 Entry into force: 22 April 1954, in accordance with article 43, at art. 1(2).

¹⁰⁶ *Supra* note 98.

requirements for providing trafficking victims with a reflection period.¹⁰⁷ According to the resolution, when an investigating officer has sufficient evidence that a person is a victim of human trafficking, he or she issues an order for a thirty day reflection period. Unlike the right to a residence status, the right to a reflection period is not made dependent on victim's willingness to cooperate in legal proceedings.

Conclusion

This paper assessed the legislative framework for human trafficking victim's right to compensation and the right to remain in two European countries – the United Kingdom of Great Britain and Northern Ireland and the Republic of Lithuania.

Both countries comply with the international obligation to criminalize human trafficking. The UK has recently adopted a Modern Slavery Act that defines offenses related to human trafficking and consolidates measures aiming at prevention of this crime and protection of its victims. In Lithuania, human trafficking is prohibited by the Criminal Code, however, there is no special statute that comprehensively addresses other aspects of human trafficking, like prevention or legal remedies to victims.

Both countries provide several legal mechanisms for human trafficking victims to pursue compensation. The UK Modern Slavery Act 2015 established the power of a criminal court to make reparation orders. Victims of human trafficking in the UK may also file a civil lawsuit, apply to Criminal Injuries Compensation Authority, or file a claim to the Employment Tribunal. In Lithuania, a criminal court has a power to order compensation for monetary damages, and

¹⁰⁷ Resolution of the Government of Lithuania, no. 430, April 18, 2012. According to the resolution, a victim of human trafficking can be denied the right to a reflection period if his or her presence in Lithuania would constitute a threat to the national security and public order or if a victim actively and voluntarily attempts to communicate with persons that are suspected for committing the crime of human trafficking *etc.*

human trafficking victims are entitled to file a civil complaint in a criminal case and to seek compensation from the Fund for Victims of Violent Crimes. However, neither the UK nor Lithuania's legislation provides categories of damages for which human trafficking victims should be compensated, nor the criteria for the calculation of the amount of compensation for moral damage suffered by victims of human trafficking.

In terms of the human trafficking victims' right to remain in a country, the UK and Lithuania provide the right to a reflection period and the right to temporary residence. Permanent residence in these countries is mainly available through asylum procedures.

Annex

	The United Kingdom of Great Britain and Northern Ireland	The Republic of Lithuania
Definition of Human Trafficking	<p>Modern Slavery Act 2015, section 2:</p> <p>Act: arranging or facilitating the travel of another person (recruiting, transporting or transferring, harbouring or receiving, or transferring or exchanging control over the person).</p> <p>Means: -</p> <p>Purpose: Exploitation. Exploitation includes slavery, servitude, forced or compulsory labour, sexual exploitation, removal of organs or other forms of exploitation where a person is induced by <i>force, threats or deception</i> to provide services, benefits or enable another to acquire benefits or securing services from children and vulnerable persons.</p>	<p>Criminal Code, art. 147:</p> <p>Act: selling, purchasing or otherwise conveying or acquiring a person or recruiting, transporting or holding the person in captivity.</p> <p>Means: physical violence or threats or otherwise depriving a person 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 control.</p> <p>Purpose: Exploitation. Exploitation includes slavery or practices similar to slavery, prostitution, pornography or other forms of sexual exploitation, forced labour and services, including forced begging, exploitation of criminal activities, removal of the victim's organ, tissue or cells and other forms of exploitation.</p>
Compensation avenues	<ul style="list-style-type: none"> • Reparations order in a Criminal Court; • Civil lawsuit; • Criminal Injuries Compensation Authority; • A claim to the Employment Tribunal. 	<ul style="list-style-type: none"> • Compensation order for pecuniary damage; • Civil complaint in a criminal case; • Civil lawsuit; • Compensation from the Fund for Victims of Violent Crimes.
Reflection and recovery period	45 days	30 days
Temporary residence	<p>Duration: Minimum of 12 months, and not more than 30 months (depends on individual case). Domestic workers as HT victims - 6 months right to remain under Modern Slavery Act 2015.</p> <p>Grounds: victim's personal situation or victim's cooperation with police, or granted to victims that pursue compensation.</p>	<p>Duration: 6 months, renewable.</p> <p>Grounds: cooperation with law enforcement.</p>
Permanent residence	Asylum procedure. Positive decision - permission to stay for 5 years with a right to settle in (indefinite leave to remain).	Asylum procedure. Positive decision - permission to reside permanently.