

## MARRIAGE OF CONVENIENCE AS TYPE OF HUMAN TRAFFICKING IN LATVIA

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**Abstract.** Human trafficking can be traced back to ancient history – slavery. Over time, the forms and types of slavery have changed, but the essence of present-day human trafficking means the same as thousands of years ago – people selling people. Human trafficking is generally understood as prostitution and other forms of sexual exploitation, forced labour or services, slavery as well as organ harvesting. However, in today's society there is more and more discussion about the spreading of a new form of human trafficking - marriages of convenience, which are entered into for the purpose of tangible benefit to both partners. In addition, modern researchers have concluded that in a number of European Union countries, including Latvia, a new trend in human trafficking has recently been observed - exploitative marriages of convenience. When explaining the human trafficking and its influencing processes from sociological point of view, it is necessary to focus on the individual and collective levels of dimensions of analysis; and several scientists have focused on the integration of this kind of social analysis processes such as Anthony Giddens, Pierre Bourdieu and others. The social nature of fictitious marriages can be seen in the conditions related to behavioural causes of both victims and recruiters. They can be found in a society/community where a victim of human trafficking or recruiter lives.

**Key words:** human trafficking, marriage of convenience.

**JEL code:** K42, 138

### Introduction

Every year 700 000 to 4 million people are sold into slavery and held against their will all over the world (Trafficking in women..., 2001). The data provided by the International Organization of Migration show that each year about 2.000 residents of the Baltics become victims of human trafficking (Klave E., 2007). However, precise information about the true amount of people involved in human trafficking is not available, since the data about the people who work abroad illegally, against their will or in forced labour, is inaccurate. Human trafficking is generally understood as prostitution and other forms of sexual exploitation, forced labour or services, slavery as well as unlawful organ harvesting. However, in today's society there is more and more discussion about the spreading of a new form of human trafficking - marriages of convenience, which are entered into for the purpose of benefit to both partners.

Starting with 2013, the entering into marriage of convenience in Latvia or by Latvian citizens abroad is considered a felony. Fictitious marriage as a form of human trafficking is a cruel crime where a victim is deprived of his/her fundamental human rights. A victim of fictitious marriages

faces numerous problems such as various types of violence and fewer opportunities to move freely; and as a result of it, a person is forced to go through social rehabilitation in order to better integrate into social processes after returning to their homeland. On the basis of the information given by the society "Asylum - safehouse", which provides state funded social rehabilitation services for victims of human trafficking, in the period from December 2007 to June 2015, professional assistance was provided to 113 victims of human trafficking; 59 of them had suffered from getting involved in fictitious marriage. (Irija versas pret..., 2015) According to the information provided by the Ministry of Foreign Affairs, in 2009, 257 Latvian citizens in Ireland got married to Pakistanis, 80 - to Indians, 20 - to citizens of Bangladesh as well as Nigeria, Afghanistan, Egypt, Iraq, Syria and other. In 2010, 143 Latvian citizens in Ireland got married to citizens of Pakistan, 37 - of India, 17 - of Bangladesh, 11 - of Nigeria, but in 2011 from January to the end of August 199 residence permits in Ireland were requested on the basis of marriage to a Latvian (EU) citizen, of which 80 permits were for Pakistani citizens, 20 - Bangladeshi citizens, 16 - Indian nationals and

10 - Nigerian citizens (Diskusija par fiktivajam..., 2011).

In 2012, in Ireland alone 108 Latvian citizens entered into marriage with third-country nationals (Fiktivo laulibu..., 2013). The information provided by the Ministry of Foreign Affairs indicates that during recent years alarming trend has been observed of female Latvian citizens getting married to third-country nationals. Of course, it cannot be conclusively stated that all these marriages are fictitious; however, referring to the information published by the Ministry, the majority of marriages are fictitious and their purpose is to tangibly benefit from them. The given information substantiates the necessity to study marriage of convenience as a social phenomenon both theoretically and empirically as it is relevant not only for Latvia, but also for the EU as a whole. The purpose of the paper is to give theoretical explanation of marriage of convenience in the context of human trafficking, as well as to describe marriage of convenience as a social phenomenon in Latvia. Research objectives include the theoretical explanation of marriages of convenience, as well as analysis of statistical data, reflecting the prevalence of marriages of convenience. The used research methods are the analysis of scientific literature and statistical data as well as the analysis of previous research.

### **Results and discussion**

#### **Explanation of marriage of convenience in the context of sociological theories**

Marriage of convenience as a form of human trafficking is a multi-dimensional phenomenon which, on one hand, includes circumstances related to the choice of victims of fictitious marriage to get involved in it and, on the other hand, includes elements of social structure that make this deviant behaviour possible on the side of recruiters. It means that the phenomenon of fictitious marriage cannot be described in the context of a single theoretical perspective. Since this paper views marriage of convenience as a form of human trafficking, the choice of

theoretical perspectives includes that scientific information which is focused on the explanation of aspects linked to human trafficking.

When developing a theoretical framework for human trafficking, the greatest difficulty faced by researchers is the multi-dimensional nature of this phenomenon that obliges to not only include all affected areas in the definition of human trafficking, but to also explain this phenomenon in the context of both micro and macro level theories, since human trafficking affects not only the micro level (aspects linked to individual actions), but also macro level social processes that contain pre-conditional aspects of collective behaviour. The explanation of human trafficking and its influencing processes from the sociological viewpoint requires focusing on the individual and collective dimensions of levels of analysis, and the integration of analysis of this type of social processes has been a focus of interest to several scientists such as Anthony Giddens, Pierre Bourdieu, as well as Jürgen Habermas and others.

According to Anthony Giddens, individual social practices are implemented on a collective or social level and on individual level. Each level is characterized by its own kind of resources and regulations that are applied in order to carry out an action or implement a system. In accordance with Anthony Giddens' theory of structuration, human trafficking is a type of social reality that is made of particular social practices; these practices are formed by social subjects and are carried out within different systems. He argues that any periodical social relations create a social system. Thus, a friendship or marriage of two individuals is a social system (*Giddens, 1984*). So for fictitious marriages to be possible there need to be both favourable environment and socially accepted norms suitable to this process, as well as appropriate circumstances that encourage both recruiters to get engaged in this deviant behaviour and victims – to comply with it (*Giddens, 1984, 1-28*). Thus, a conclusion can be

made that fictitious marriage does not take place without public involvement: there need to be social norms that allow entering into marriage of convenience, as well as circumstances that encourage its potential victims to enter into it, for example, due to bad living conditions, inability to receive appropriate education or get a decent job. On the other hand, the countries of origin of recruiters, such as Pakistan, India, Iran and others, have created the circumstances in the area of personal welfare for their nationals that encourage them towards deviant behaviour.

Just like Anthony Giddens, a representative of Frankfurt School and adherent of critical sociology, Jurgen Habermas has developed a theoretical basis that is broad, complex and theoretically multi-dimensional. In accordance with Jurgen Habermas' theory, individuals create the life suitable for them by making decisions; they determine the course of their life while being influenced by such components as norms set by society, culture and individual identities resulting from the socialization processes (Habermas, 1998). He believes that human trafficking would be impossible without the network of agents and their cooperation; it speaks of the fact that human trafficking functions similarly to criminal groups. The author of this paper believes that in order to give a comprehensive explanation of the phenomenon of human trafficking, it is important to pay attention to the portrayal of both the environment and its effect on different areas of human life and the analysis of the factors influencing human capability introduced by theoretical conclusions of Pierre Bourdieu.

According to Pierre Bourdieu, individual habitus or capability depends on the social environment where an individual has socialized, the experience obtained throughout the life, things learned and gained during the process of socialization as well as his/her individual characteristics (Bourdieu et al., 1996). Based on the ideas above, it can be concluded that human trafficking is a multi-dimensional phenomenon

made of both the factors that influence the behaviour of individuals involved in it and the conditions created by society. Individual action is largely determined by the social standards, norms that regulate people's ability to meet their needs. If the chances to satisfy the needs are limited, individuals' behaviour is not predictable, because each individual's goal is to achieve adequate standard of living.

### **Theoretical explanation of fictitious marriage as a social phenomenon**

The origins of human trafficking are found in ancient history – in slavery. Over time, the forms and types of slavery have significantly varied, but in essence human trafficking means the same thing today as it meant thousands of years ago: people selling people. Human trafficking is a form of present-day slavery where individuals, usually women and girls are forced, intimidated, coerced or hoaxed to work, be sexually exploited and do other things to benefit someone else. Human trafficking is an international problem involving almost every country in the world either as a recipient of enslaved people or as a dispatcher. Its main purpose is exploitation of an individual for material gain. Exploitation means utilization of an individual for mostly unlawful purposes. (Global Report..., 2009).

Again and again society hears of the cases of human trafficking when victims were recruited by acquaintances, friends or even family members that break the trust between them. We hear about employment companies, online advertising and social networks being used for human trafficking and entrapment of people into exploitation. Well-paid job offers are the most used recruitment method. People are offered a chance to go abroad in a very short time and enter employment. Marriage is another recruitment method when a recruiter, usually through social networks seeks out another individual to prey on their social vulnerability. There is a belief that marriage of convenience is one of the most widespread forms of human

trafficking. Marriage of convenience is used in order for third-country nationals to gain EU residence permissions in a status of a family member; it gives them a chance to freely move throughout and reside in all of the ES Member States. As a result of fictitious marriage, individuals often are exploited to do the household work and are sexually abused (Cilveku tirdzniecibas..., 2004-2020).

According to the European Council on December 4, 1997, Resolution No. 97 / C 382/01, dated December 4, 1997 on measures to combat fictitious marriages, by the definition "marriage of convenience" means a marriage concluded between a European Union member state citizen or a third-country national who is a legal resident of a Member State and a third country national who is not a legal EU resident, and their single purpose is to circumvent the rules for third-country nationals on their entry and residence in EU and to obtain a residence permit or authority to reside in a Member State (Council Resolution, 1997).

At present, the largest number of fictitious marriages has been registered in Ireland and Great Britain. The popularity of fictitious marriages in these countries can be explained by several factors: a liberal approach to both registration of marriage and its inspection subsequently. These countries are the European Union (EU) Member States but not Schengen-zone Member States; they have relatively large ethnic communities of third-country origin that provide the support to fictitious marriages, for example, by doing the recruiting. These factors interact with the fact that these countries are the destination for many female citizens of Latvia that willingly agree or are hoaxed into marriages with third-country nationals, thus making it easier for third-country nationals enter the EU and the Schengen zone.

In 2015, a study was conducted as a part of the project "Preventing human trafficking and marriages of convenience: a multidisciplinary

solution". The study involved five countries - Latvia, Lithuania, Estonia, Ireland and Slovakia, and lasted 20 months. The study authors found that a number of European Union countries, including Latvia, recently encountered a new phenomenon in human trafficking - exploitative marriages of convenience. Those are the cases when a person originally agreed to enter into a marriage of convenience, but then was deceived and exploited.

The study reveals three main ways in which women are engaged in exploitative marriages of convenience. First, a person is forced to enter into a marriage of convenience. Second, there are cases of human trafficking where a person originally agreed to enter into a marriage of convenience, but then was cheated and subjected to violence and, consequently, to exploitation. The third type of exploitative marriages are marriages of convenience, where a person was initially given the impression that it was to be a real marriage, but after a while it turned out to be a fraud, that is, the husband saw the marriage as fictitious and only the wife hoped that it would be genuine (Viuhko M., Lietonen A..., 2016 ).

Referring to the abovementioned study, it can be concluded that in national legislation of all five countries, the act of human trafficking is recognized as a criminal offense and that the recruitment methods in the areas of exploitative marriages and general human trafficking are the same - the victims are lured by deceptive promises and bogus offers of jobs and opportunities. Analysing the Latvian situation, the researchers found that there have been cases where women entered into a marriage of convenience knowingly and willingly. In these cases, the conjuration was accomplished by using the fact that women experienced economic difficulties and were in need of money. In cases of exploitative marriages of convenience, these women tend to be cheated, the money - not paid, and women - subjected to various kinds of exploitation. As reflected in the study, recently

women voluntarily involved in marriages of convenience are not provided for or the payment is insignificant. A compensation for entering into a marriage of convenience does not come to those women who are fooled into thinking that it is a true love and it will be a real marriage with third-country nationals, since they are given that impression in the beginning of the supposed courtship.

Recruitment approach when one does not offer a marriage of convenience, but creates the illusion of genuine relationship, is especially beneficial to third-country nationals, because there is no need to pay for marriage of convenience. The interviewed social rehabilitation service providers assessed it as a common recruitment strategy. In these cases, it is very difficult to prove that a woman was used since she thinks that marriage was not a pretence, but was a real one. At the same time, a number of indications confirm that the marriage is real only on one side, because women are rushed to get married and have children, but most importantly - the relationships are subordinated to the visits of migration services needed to get a residence permit. In most cases, victims begin to realize what the real situation is, when they arrive at the country of destination. In order to control women, beneficiaries use threats and psychological control, sexual, economical and physical abuse, and financial control.

The social nature of fictitious marriages can be linked with the circumstances related to the reasons of actions of both victims and recruiters. They are found in society where victims of human trafficking and recruiters live. For example, the economic conditions associated with debt, unemployment, high housing rent; cultural conditions related to the understanding of the role of women and values of the community; psychological conditions associated with low self-esteem, dependency on men; family background, which includes experience of negative family patterns, domestic violence; social conditions

that include social exclusion, various addictions; personal circumstances relating to personal crisis, personal peculiarities (Viuhko M., Lietonen A....,2016 ).

### **Regulatory framework restricting marriages of convenience**

Given that in recent years the number of women from Latvia entering into marriages abroad has increased and taken into consideration that in several cases women ended up in exploitative conditions, which comply with the definition of human trafficking, Latvia has recognized that marriages of convenience present serious risk of human trafficking. On 1 April 2013, amendments to the Latvian Criminal Code came into force introducing legislation which criminalises the fraudulent provision of the opportunity to legally acquire the right to stay in the Republic of Latvia, another EU Member State, the European Economic Area or the Swiss Confederation. The State Police have since then initiated 12 criminal cases of recruitment of persons into fictitious marriages. Latvia's legal regulations are based on international laws and regulations, which are oriented towards the restriction of human trafficking. A significant regulatory document is the Palermo Protocol accepted in 2000, which now has become one of the main documents regulating the human trafficking and the steps the EU states need to make in this area. The Protocol entered into force on 25 December 2003. The document provides for preventive measures, measures to protect the victims, as well as opportunities for victims of human trafficking to remain in the country of destination. (Protocol..., 2004)

The European Charter of Fundamental Rights Article 5 provides for prohibition of human trafficking.

The second document, which focuses on fighting human trafficking at the international level, is the Council Framework Decision on human trafficking approved in 2002 that had to be implemented by Member States by 1 August

2004. The Council Framework Decision provides that all Member States must ensure that human trafficking is punishable by imprisonment for no less than 8 years; legal persons can be held responsible for the crimes of human trafficking; also it required for steps to be taken to establish national jurisdiction with regard to human trafficking, when the offense is wholly or partly within its territory or the offender is one of its nationals (Council framework..., 2002).

National-level regulations in the area of human trafficking can be divided into two categories - the criminal legislation and social regulations. The main legal act governing human trafficking-related offenses at the national level is the Criminal Law. Article 154.2 of the Criminal Law defines the concept of human trafficking; article 154.1 lays down penalties for human trafficking; article 165.1 lays down penalties for sending a person abroad for sexual exploitation; article 162 explains the phenomenon of "seducing into immorality", and Article 164 explains the aspects of "coercion into prostitution". Being acquainted with the Criminal Code definition of the phenomenon of human trafficking, it can be concluded that marriages of convenience as a form of human trafficking is not included in it. However, Article 152 of the Criminal Law determines another person's unlawful imprisonment as a criminal and thus punishable unlawful act, which provides that "for depriving a person of their freedom to determine his/her location (illegal deprivation of liberty), a person shall be punished by temporary imprisonment or community service, or a fine" (Kriminallikums,1999:152.p).

Social regulations mainly govern the rehabilitation of victims of human trafficking. The main act regulating social rehabilitation services for victims of human trafficking is 'the Social Services and Social Assistance Law'. Victims of human trafficking receive social rehabilitation services since 2006 and the allocation and use of this service is determined by Cabinet Regulations

No. 889 "Regulations on the procedure how victims of trafficking receive social rehabilitation services and the requirements to providers of social rehabilitation services." (Noteikumi par kartibu..., 2007). It must be noted that in order for victims of marriages of convenience to receive social rehabilitation, it is necessary to prove that marriages of convenience include offenses that comply with the concept of human trafficking and that marriage of convenience can be defined as a form of human trafficking. Amendments must be made so that the offenses against a victim of fictitious marriage would fit the definition of human trafficking included in Article 154.2 of the Criminal Law, as in the following:

(1) human trafficking with the purpose of exploitation includes the recruitment, transportation, transfer, harbouring or receipt of persons, by means of violence or threats or abduction, deception or abuse a person's dependency on the perpetrator or the state of helplessness or by giving or receiving of payments or benefits to achieve person's consent, upon which the victim is dependent;

(2) recruitment, transportation, transfer, harbouring or receipt of minors for exploitation purposes, is regarded as human trafficking even if it is not carried out by the means mentioned in the first paragraph;

(3) exploitation as it is understood in this article is involvement of individuals in prostitution or other forms of sexual exploitation, forced labour or services, slavery or similar forms (debt bondage, serfdom or other forms of forced dependency on another person), keeping in servitude, or unlawful harvesting of human tissue or organs (Kriminallikums, 154.2.p.). Marriages of convenience as a form of human trafficking are difficult to prove, and that also explains the small number of criminal cases in this area, because in the cases of fictitious marriages it is necessary to verify that the illegal acts conducted towards the victim meet the definition of human trafficking. Quite frequently, the victims are not aware of

offences committed against them; often they are afraid to reveal the truth or the guilt cannot be proven.

### **Services of social rehabilitation to the victims of human trafficking**

In Latvia, the social rehabilitation to victims of human trafficking is provided by two NGOs 'Asylum - safehouse' and 'Resource Society of Martha'. Social service course up to 180 hours is financed from state funds (Noteikumi par kartibu..., 2007). Thus, if a criminal offense as a result of human trafficking in form of marriage of convenience has been committed against a person and there has been harm done - moral injury or physical suffering, the state provides various services of social rehabilitation to these victims of human trafficking. Since 2007 the association 'Asylum - safehouse' provides services to victims of human trafficking. The society has put together a team of inter-professional experts that offer services of a social worker, lawyer, psychologist, social rehabilitator, a family doctor. Victims are offered safe home, an opportunity to receive material support to buy food, household and hygiene items, to cover medical expenses as well as purchase of clothing and footwear. Rehabilitation period, funded by the state, is 6 months. After 6 months of rehabilitation programmes, customers can still get five free sessions with chosen specialist. (Socialas rehabilitācijas..., 2014).

And since 2015 the social rehabilitation to this target group is provided also by 'Resource Society Martha'; they offer counselling services of a professional social worker, psychologist, lawyer, medical employee; ensure the repatriation of victims of human trafficking, their reception and delivery to safe abode; develop an individual rehabilitation and reintegration program; provide assistance in restoration of identification documents as well as provide

support during criminal proceedings. Since 2015, the association has identified 21 victims of human trafficking; 8 of them were victims of trafficking in a form of fictitious marriage.

### **Conclusions**

- 1) In recent years, there is an alarming trend for the female citizens of Latvia to enter into marriage with third-country nationals. Publicly available data shows that from 2009 until 2012 at least 872 have married third-country nationals, and in case of some of these marriages there is a risk of them being fictitious.
- 2) From 2007 until December 2015 the services of social rehabilitation were provided to 113 victims of human trafficking; 59 of these people were victims of fictitious marriage. True number of marriages of convenience is not known, because the information about them comes to the surface only in the cases when victims have sought help in the police or other institutions.
- 3) According to Pierre Bourdieu, human trafficking is a multi-dimensional phenomenon that is made of both the factors affecting human behaviour and the conditions created by society.
- 4) Recently a new type of human trafficking has been observed - exploitative marriage of convenience. These are fictitious marriages when the involved person originally agreed to enter into marriage of convenience, but later was deceived and submitted to various types of exploitation.
- 5) The writing and implementation of legally binding laws and regulations that restrict human trafficking began around 2002-2003 when legislators passed the Framework Law and Palermo Protocol. In Latvia, the aspects linked to human trafficking are governed by the Criminal Law.

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