

ECLIC International Scientific Conference “EU 2020 – lessons from the past and solutions for the future“, Osijek, 11-12 September 2020.

Clash between the victims’ right to an effective investigation and the plea-bargaining procedure as a legitimate tool to dispose of a case in practice of the European Court of Human Rights

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1. Right of victim to effective investigation in practice of the ECtHR

- State's obligation to carry out an effective investigation has been considered in the Court's case-law as an obligation inherent in Article 2, 3, 5, 8 ECHR
- Standards of effective investigation:
 - Independence
 - Adequacy
 - Promptness and reasonable expedition
 - Comprehensiveness
 - Transparency
 - Victim involvement

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2. Article 4 and right to effective investigation (S.M. v. Croatia, 2020)

- Article 4 of the Convention, together with Articles 2 and 3 of the Convention, enshrines one of the fundamental values of democratic societies
- Article 4 § 1 of the Convention requires that “no one shall be held in slavery or servitude”.
- Article 4 § 2 of the Convention prohibits forced or compulsory labour.
- Article 4 makes no mention of trafficking, proscribing “slavery”, “servitude” and “forced and compulsory labour”
 - Trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership.
 - It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment

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3. GRETA

- Chapter VII of the Anti-Trafficking Convention provides for the establishment of a monitoring mechanism that will supervise its implementation by the member States:
 - Group of Experts on Action against Trafficking in Human Beings (“GRETA”)
 - Committee of the Parties
- First evaluation round of the Convention, 4th General Report (2015), noted, inter alia, as regards investigation, prosecutions and sanctions on human trafficking cases, as follows:

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3. GRETA

- One of the purposes of the Convention is to ensure the effective investigation and prosecution of trafficking offences
 - GRETA's evaluation of 35 parties to the Convention reveals that there is an important gap between the number of identified victims of trafficking and the number of convictions
 - GRETA's reports refer to a variety of reasons for this gap: over-reliance on victims' statements, issues around credibility of witnesses who may change their statements over time, or difficulties in relation to the sufficiency of evidence
 - Investigators, prosecutors and judges who are not specialized and trained to deal with trafficking cases may be prejudiced vis-à-vis victims of trafficking and insensitive to the problems experienced by them

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3. GRETA

- Croatia has been subject to two rounds of evaluations by GRETA. In its second evaluation report published on 4 February 2016 GRETA urged Croatian authorities to:
- take steps so that law enforcement officials, social workers, NGOs and other relevant actors adopt a more proactive approach and increase their outreach work to identify victims of human trafficking for the purpose of sexual exploitation;
- to take additional legislative and practical measures to ensure that:
 - trafficking in human beings cases are investigated proactively, prosecuted successfully and lead to **effective, proportionate and dissuasive sanctions**;
 - the offence of trafficking in human beings is ***excluded*** from the ***plea bargaining*** procedure

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4. Effective investigation vs plea bargaining

- Plea agreement and defendants right to a fair trial ?
- Plea bargains should not be concluded at the expense of any rights of the victim ?
- Penalties imposed under plea bargains > if too low > violation of right of victim to effective investigation ?
- Involvement of the victim in the plea-bargaining process ?
 - Financial interest > victim is interested in restitution being imposed as part of the sentence
 - Retribution / revenge > victim feels he or she has been violated and that the criminal's punishment should be severe

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5. Croatian situation and perspectives

- Art. 360 (6) In the case of offenses against life, limb and sexual liberty punishable by imprisonment for a term exceeding five years, the public prosecutor must obtain the consent of the victim to engage in plea agreement
- GRETA
 - effective, proportionate and dissuasive sanctions in term of effective investigation vs. mild sanctions in term of plea bargaining?!
 - trafficking in human beings should be excluded from the plea bargaining procedure ?

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THANK YOU FOR YOUR ATTENTION

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