

# Alternative report – Latvia 2017-2019

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## **Introduction**

MARTA Centre is a non-governmental organization (NGO) that has worked in the field of women's rights protection for 20 years, supporting women in Latvia – non-citizens and migrants, women with low income and unemployed women, female victims of human trafficking and of domestic violence. MARTA Centre is the only women's rights NGO in Latvia that, in addition to practical (psychological, legal and social) support to victims of violence and human trafficking actively works with advocacy issues. Additional field of MARTA Centre's work is violence prevention, achieved by working with youth to challenge the prevalent gender norms and behaviours that make young people susceptible to becoming victims and/or perpetrators of violence. MARTA Centre routinely cooperates with other NGOs and the respective public authorities at local, national and international level to safeguard the human rights of women and to raise awareness of the significance of the issue.

Recognizing the importance and value of the Third Report on the Progress made in the fight against trafficking in human beings prepared as per Article 20 of Directive 2011/36, MARTA Centre's experts shall use this opportunity to submit an Alternative Report on the same topic to highlight how the aspects discussed in the State Report work on a practical level. Due to expert capacity limitations, MARTA Centre will comment exclusively on those aspects that are particularly urgent in MARTA Centre's view or most closely aligned with the Centre's expertise.

## **Legislative Changes and Impact**

Since the previous reporting phase 2014-2016 there have been several legislative changes put in place that have a positive impact on prevention of trafficking.

- In 2017 to coordinate the activities of public administration institutions, local governments and non-governmental organizations in accordance with the Guidelines for the Prevention of Trafficking in Human Beings 2014-2020 as well as to ensure prompt exchange of information and coordinate actions in the prevention of trafficking in human beings and provision of support and social services to victims of trafficking in human beings a working group was established. In reality it works more as a mechanism of reporting on the achieved things and very rarely there are in depth discussions on the pressing issues due to the lack of time and resources.
- In 2019 Republic of Latvia Cabinet of Ministers adopted regulation No. 344 "Regulations Regarding the Procedures by Which the Victims of the Trafficking in Human Beings Receive Social Rehabilitation Service, and the Criteria for the

Recognition of a Person as a Victim of the Trafficking in Human Beings”<sup>1</sup> that no more prohibits rehabilitation service providers from helping clients that have been placed in a social care or social rehabilitation institution financed by the State or local government or in a juvenile investigation or correction institution. Often MARTA Centre has received information on possible sexual exploitation cases in orphanages where girls have been exploited but we haven’t been allowed to provide the necessary rehabilitation programme. Although it is possible now to provide these services there is not a specific programme and budget that is tailored for the needs of minors. Often times when there has been sexual exploitation rehabilitation needs to be more intense and it is needed to involve more specialists and NGO’s have to raise funds additionally since State programme is rather limited in its resources in order to provide suitable services for victims.

### **Follow-up on legislative changes in the previous reporting period**

In 2014 an important amendment of Criminal Code was adopted. The trafficking definition: Article 154.2 of Criminal Code included abuse of persons “vulnerability” in the trafficking definition but as our experience shows awareness among police on the aspect of vulnerability is rather little and this is confirmed by human trafficking cases initiated by police. Therefore we insist that there has to be had a serious joint discussions with police, prosecutors, judges, immigration service and key first responders on the understanding of vulnerability (f.ex. how the poverty data can be used by the law enforcement to demonstrate vulnerability). This correlates with the fact that the perception about involvement in prostitution also has not changed. The attitude towards persons involved in prostitution as free agents making own choices by default limits police action in considering sexual exploitation cases where person is sexually exploited in trafficking cases or in exploitation of prostitution. In our praxis we have encountered obvious cases of sexual exploitation where police has fined the victim for breaching the regulatory norms of prostitution although the victim has asked for help and told the police that her partner is forcing her into prostitution by threatening to take away her children. In the press it is often reported about brothels and so called massage parlours that have been raided by police and pimps that have been convicted but in none of these cases women who have been used there have been referred to the rehabilitation service providers.

The problematic issue is that there is still a different perception on who is a victim of trafficking especially related to victims of exploitation of prostitution and other forms of sexual exploitation among involved stakeholders. Therefore, many victims of sexual exploitation do not even receive information about possible assistance. In their yearly reports Riga Municipal Police reports how many prostituted persons they have punished by making control purchases on provision of sexual act purchases in places where it is not allowed- like 100 m from church or education facility. The police have not done any risk assessment on whether prostituted persons are victims of trafficking. When spoken to the police they do not recognise these women as victims of sexual

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<sup>1</sup> <https://likumi.lv/ta/en/en/id/308253-regulations-regarding-the-procedures-by-which-the-victims-of-the-trafficking-in-human-beings-receive-social-rehabilitation-service-and-the-criteria-for-the-recognition-of-a-person-as-a-victim-of-the-trafficking-in-human-beings>

exploitation and often refer to the free will as well assumption that they earn “easy money” and do not need any rehabilitation services. We have addressed this issue in many instances asking police to give information and refer to service providers women from brothels and massage salons since for us to include them in the rehabilitation programme they don’t necessarily need to start criminal proceedings.

We understand the police approach in assessing and registering cases under the relevant article of Criminal Law, where they see and believe to be able to gather objective evidence that lead to conviction of perpetrators, however this creates a skew picture about trafficking data on sexual exploitation grounds.

MARTA Centre agrees that important progress has been made in legislation regarding human trafficking, particularly with the introduction of the term “vulnerability” in the Criminal Law; however, there seems to be insufficient understanding among the Police, Judiciary and the general population of what this term actually means, as shown by the following extract from the State Report: “The criminal offence provided for in Article 165<sup>1</sup> (“Sending a Person for Sexual Exploitation with the Person’s Consent”) is separated from Article 154<sup>1</sup> “Trafficking in Human Beings” of the *Criminal Law* because the person is subjected to sexual exploitation with the person’s consent which is considered a less dangerous criminal offence, consequently, less serious punishments are applicable.” MARTA Centre maintains that there should be no distinction made between prostitution with “consent” versus “forced prostitution”, first, because state of vulnerability means exactly that – that “consent” of anyone can be acquired, just that the correct influence has to be used, and it is easier with a person who is vulnerable in a particular way, thus this “consent” is actually meaningless; second, in both “types” of prostitution an advantage of a person’s vulnerability is being taken, meaning that it has to be considered human trafficking either way; third, the psychological, emotional, social and physical consequences for the victims exploited with their “consent” or without are equally grave, therefore there should be no difference in the punishment applicable to the perpetrators in these cases.

As a direct result of this, human traffickers routinely are convicted on Article 165<sup>1</sup>, not Article 154<sup>1</sup>, resulting in smaller penalties for essentially the same crime. As shown in the State Report: “In 2016, the convicting judgments for crimes according to Article 154<sup>1</sup> of the *Criminal Law* entered into force in 3 cases (4 persons were convicted) and 9 convicting judgments for crimes according to Article 165<sup>1</sup> of the *Criminal Law* entered into force (12 persons were convicted).” It has been explained by the officials that it is much easier to charge for these crimes that the crime of human trafficking that is hard to prove especially in cases of sexual exploitation but it also make it look like trafficking of human beings in Latvia is not a common crime as well as the Social Integration State Agency can deny provision of the service if the criminal proceedings are on Articles of Prostitution instead those of Trafficking in Human beings.

In 2018, investigations and convictions continued a multi-year decline. Police investigated four new cases (three sex trafficking and one labour trafficking) involving eight suspects under Section 154-1, compared with seven cases involving four suspects in 2017. Authorities indicted one trafficker under Section 154-1, compared with three in 2017. Courts convicted one trafficker in 2018, compared with four in 2017. The convicted trafficker received a conditional sentence of five years, resulting in no prison

time. Under Section 165-1, authorities investigated two new cases, indicted one defendant, and convicted one suspect, who did not receive a prison sentence. By comparison, in 2017, authorities investigated eight cases, indicted five defendants, and convicted six suspects. In 2018, the anti-trafficking police unit seized approximately \$2.3 million in assets from suspected traffickers. The prosecutor general's office completed three judicial assistance requests in trafficking cases from the United Kingdom and Ukraine, and the government extradited four traffickers to the United Kingdom as a result of a 2017 joint investigation on a labour trafficking case. A 2014 case involving two Riga police officers charged with facilitating pimping remained in court at the end of the 2018<sup>2</sup>.

Perennial issues within the judicial system, such as lengthy trials and lenient sentences, which often result in no jail time for convicted traffickers, limits Latvia's prosecution efforts. Furthermore, unlike the police, neither the prosecutor general's office nor the courts have units of prosecutors or judges specializing in trafficking or staff dedicated to trafficking issues. Consequently, prosecutors and judges possess a limited understanding of trafficking. Experts report the need for more training for judges, prosecutors, and law enforcement, particularly on applying anti-trafficking laws, working with victims, evidence collection, and understanding psychological coercion and trainings where NGO experts working with victims are invited as lecturers. Here too can arise the issue of the lack of unified understanding about what is human trafficking and its victims, especially in cases of exploitation of prostitution since the involved experts come from different organizations. The government has supported such educational efforts by organizing a two-day training on prosecution and victim protection issues for judges, prosecutors, police, and NGO representatives. Additionally, Latvia's judicial center has coordinated various courses on trafficking for prosecutors, judges, and judges' assistants; however, only four percent of the total number of currently appointed judges registered for the training. Latvia's municipalities also organized a nine-part training series for police, attorneys, and prosecutors on victim identification, at-risk groups, rehabilitation, and interagency cooperation, and the State Border Guard trained its border guards in victim identification.

### **Progress on prevention of trafficking**

Article 18 of the Directive focuses on prevention of trafficking. One of the problems right now in Latvia is that since 2017 the prevention focus has shifted to persons trafficked for labour exploitation leaving sexual exploitation in the background. It is established that people who are trafficked are mainly trafficked for sexual exploitation and that is affecting mainly women and girls. EU and other financial sources have shifted their focus as well leaving the issues of sexual exploitation, like national referral mechanism and prevention of sexual exploitation, unresolved.

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<sup>2</sup> <https://www.state.gov/reports/2019-trafficking-in-persons-report-2/latvia/>

As it has been reported before, human traffickers exploit domestic and, to a lesser extent, foreign victims in Latvia, and traffickers exploit victims from Latvia abroad. Traffickers subject Latvian women and girls to sex trafficking in Latvia and other parts of Europe. Latvian women recruited for brokered marriages in Western Europe are vulnerable to sex trafficking, domestic servitude, and forced labour. Traffickers target single women with limited education, minors from disadvantaged families, students, unemployed adults, and people with mental disabilities by word-of-mouth and through social media. Children in state orphanages are particularly vulnerable to sex trafficking. Latvian men and women are subjected to forced labour, mainly in other parts of Europe. Government officials report concerns of possible domestic labour trafficking of Ukrainian guest workers in the agriculture and construction industries.

### **Reduction of demand for trafficking for sexual exploitation and exploitation of prostitution**

MARTA reconfirms that there has been no action from the State party in addressing demand for sexual exploitation. Prostitution up until present has been regulated by Cabinet of Ministers' Regulation. In 2017 a working group including NGOs, Police, ministry representatives and other actors was set up to draft a "Law on Prostitution Restrictions" which was supposed to become the main legislative norm to regulate the issue. MARTA Centre experts were also members of the law drafting group, and the process has taken up until the present.

Regarding the content of the new law: MARTA Centre has expressed repeatedly that according to data and our understanding of the sexual exploitation victims' situation, the present Regulation does not reach its aim to reduce the demand due to unfounded assumptions being included therein (e.g., that prostituted persons have a lot of choice regarding when and where they are bought for sex, and therefore fining them will change their behaviour). Unfortunately, despite our repeated objections, this provision (fining the prostituted persons) not only has not been rejected, it has been included in the new law. Although in 2020 State has received recommendations from CEDAW to ensure that women exploited in prostitution are recognized as victims and that engagement in prostitution is not subject to administrative fines, in particular by adopting the draft law on prostitution restriction, prostituted persons will still be fined if they are bought for sex in places prohibited by this new law.

Another measure included in the new law that MARTA Centre has called out multiple times is the prohibition to be involved in prostitution below the age of 25, and to use the prostitution of a person who is under 25. MARTA Centre's knowledge shows that most prostituted persons have been involved as minors, and that sex buyers either do not bother with getting to know the age of the person they buy or they buy very-young-looking or even underage girls purposefully. Taking into account the context and grave circumstances of persons involved in sexual exploitation, this norm does not protect them, but rather makes them more vulnerable to abuse, including from the police.

The same goes for the prohibition to buy sex act from a human trafficking victim. France had a similar provision before adopting the new law, and it became clear

eventually that the distinction between “consented” and “forced” prostitution is meaningless as almost no person is involved in prostitution out of personal preference.

Theoretically the new Latvian law includes a provision to fine both, the prostituted person and the sex buyer, in case this provision is breached; however, multiple instances in Latvian and Lithuanian experiences show that sex buyers are not generally targeted for fining. Another problem with including the fining in the new law is that victims remain seen as criminals and thus the police is not perceived as an ally, but a threat.

Positive aspect of the new law is that rehabilitation for both the prostituted persons and the sex buyers is included; however, it is not yet clear exactly how this will function in practice. MARTA Centre objects to the proposal to offer rehabilitation to the prostituted persons as a means to escape the fine as this sends the message that the person is a criminal either way and merely has to choose between two different punishments.

MARTA Centre maintains that the cited aims of the new law, namely “to restrict and reduce the prostitution, reduce the risks of trafficking in human beings, prevent involvement of children and young people in prostitution, reduce risks of violence against persons engaged in prostitution, and promote the termination of engagement in the prostitution and use of prostitution” will not be achieved with the draft law as it now stands; however, it could be achieved by introducing the Nordic model.

### **Detection, identification and referral mechanism**

In previous reporting period MARTA emphasized that a clear referral system has to be established, that would allow all relevant stakeholders (social services, employment agencies, NGOs, police, prosecutors, Ministry of Foreign affairs staff and others) to understand the scheme of contact and referral of victims based on the entry point of the potential/identified victim and ensuring to the degree possible the single contact point (one stop agency) principle, that will work in the best interest of the identified/potential victim.

Nevertheless, the broader referral system is not expressly described in either Cabinet of Minister regulation as described by the Latvia national report, nor in any other document (memorandum of understanding, working proceedings of the Anti-Trafficking Working Group or other). Challenges identified specifically with the immigration provision and coordination between first responders- municipality agencies – anti trafficking unit/service provider need to be clarified and addressed.

Experts noted agencies tasked primarily with non-trafficking issues, such as the State Labor Inspectorate, State Employment Agency, State Border Guard, and the OCMA, rarely refer trafficking cases for investigation or victims for assistance. Even though there have been attempts to educate the Border Guard on the issues of human trafficking, MARTA Centre has come across a new situation in the last years – namely, citizens of a third country, trafficked through Latvia presumably to other EU states, are detained on the border and, without any investigation on their situation, declared illegal

immigrants and sent back to their country of origin. These people are usually sent back to their countries before MARTA Centre has a chance to meet them for inquiry. MARTA Centre suspects that these are not cases of illegal immigration but cases of human trafficking. The collaboration must be extended, and sufficient resources allocated to the Border Guard to better manage this situation.

MARTA Centre is aware that both, institutions who are first responders for possible cases of trafficking and agencies tasked primarily with non-trafficking issues, participate in workshops on detection of victims and each of them have guidelines for procedure of detection of victims and referral process but for it to be efficient there has to be a unified understanding of what human trafficking is as well as unified tools for assessment of the cases in order to detect victims of human trafficking correctly.

Identifying child sex trafficking victims domestically remained a challenge, and the government did not detect any such victims, for example, in 2018. It is possible that state orphanages did not report cases of commercial sexual exploitation of institutionalized minors and instead gave victims limited assistance available onsite. Regulations did not allow persons from state care institutions, such as orphanages, to enroll in the state trafficking victim assistance program until 2019.

MARTA Center finds alarming that although Cabinet of Minister's Regulations regarding prostitution forbid purchase of sexual act from a minor there have not been any cases where any criminal proceedings or fining has taken place on breaching this article of Regulations. Furthermore, since 2015 there have been 5 cases where administrative violation report was drawn up against minors who were involved in prostitution. It clearly shows the attitudes towards women and girls involved in prostitution and exploited by it as well as the fact that there is no interest in examining the cases for exploitation or referring them for support<sup>3</sup>.

### **Reintegration programmes for victims of human trafficking**

Services and/or organizations catering specifically to women victims of trafficking are members of Inter Institutional working group of the Ministry of Interior according to the order of prime minister Nr. 33, 2019<sup>4</sup>.

They can participate in open procurement procedure to provide state funded rehabilitation services for victims of trafficking according to CMR Nr. 344<sup>5</sup>.

Whenever the victims are detected and referred to the mandated NGOs there is coordination on assistance for the victim and coordination of all involved institution

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<sup>3</sup> <https://ir.lv/2020/01/08/vinas-strada-labpratigi/>

<sup>4</sup> <https://likumi.lv/ta/id/304796-par-darba-grupu-cilveku-tirdzniecibas-noversanas-pamatnostadnu-2014-2020-gadam-istenosanas-koordinesanai>

<sup>5</sup> <https://likumi.lv/ta/en/en/id/308253-regulations-regarding-the-procedures-by-which-the-victims-of-the-trafficking-in-human-beings-receive-social-rehabilitation-service-and-the-criteria-for-the-recognition-of-a-person-as-a-victim-of-the-trafficking-in-human-beings>

around the case. The mandated NGOs have experience, skills and competence in victim protection and coordination of institutions to assist the victim acknowledged by all stakeholders.

While MARTA Centre acknowledges the efforts taken by Latvian state to support the victims, it has to be pointed out that, unfortunately, the support is insufficient and the mechanism for victim to acquire the official victim's status often tends to be sloppy and traumatizing. MARTA Centre regards as positive the fact that the state offers free to victim rehabilitation service that covers the basic necessities (food, shelter, medical appointments) and consultations by social worker and psychologist. This is a long welcome situation; however, MARTA Centre's experts also recognize that maximum 180 days of rehabilitation is not enough due to multiple reasons: for a person as traumatized as a human trafficking victim often is, it takes most of the devoted rehabilitation time to actually establish mutual trust between the specialist and the person in question; after the trust is established to a reasonable degree, the time left is not enough to help a person who, in many cases, has been abused for multiple years or for most of that person's life. In this case, MARTA Centre hopes the State can secure enough funds to prolong the rehabilitation services available. Another con is that the mandated NGOs do not have financial resources for monitoring further social functioning of the victims after ending the program therefore at the end of programme the specialists make appropriate measures with relevant municipalities to ensure well-being of the victims. The same time municipalities are capable to offer further support based on their limited resources; they do not have additional funds for long term assistance.

It is established that if rehabilitation service provider does not organise campaigns to inform the public, the amount of people who seek help decreases. Since the state not only does not finance the administrative costs of rehabilitation services but also the campaigns service providers must fundraise for such activities on their own.

Regarding the procedure during which the victim can receive that rehabilitation, there are problematic aspects as well. If the police grants the person the status of witness or victim in a criminal case, the person automatically is entitled to the rehabilitation. However, those who for some reason are not granted the status, have to go through a meeting with a panel of experts who, by asking questions and examining the facts, establish if the person qualifies as a victim.

Social Integration State Agency decide on the provision of the service or refusal to provide the service. In this process it might happen that although the panel of experts have recognised the person as the victim of the trafficking in human beings, State agency can deny provision of the service if in the criminal proceedings contain Articles on Prostitution instead those on Trafficking in Human beings. Together this may result in some actual trafficking victims being denied the status, protection and the needed state-funded rehabilitation; in other cases, victims have to wait for multiple meetings to take place (multiple months) before they get the help they need. In such extreme cases, MARTA Centre has worked hard to secure funding from other sources to enrol a person who was not granted the status by expert committee in the rehabilitation program nonetheless; MARTA Centre has also witnessed a case where a person was hospitalized



after a suicide attempt because the expert meeting failed to grant the needed help to the victim as soon as possible. The present mechanism must be improved.