

PREVENTING HUMAN TRAFFICKING AND SHAM MARRIAGES: A MULTIDISCIPLINARY SOLUTION (HESTIA)

In the framework of the Agreement No.: HOME/2013/ISEC/AG/THB/400005845

Project **“Preventing human trafficking and sham marriages: A multidisciplinary solution (HESTIA)”** is being implemented from 01/01/2015 to 31/12/2016.

The objective of the project is to create a shared understanding of a new, evolving new form of trafficking in human beings - through sham marriages, provide a precise definition of sham marriages as a form of human trafficking hitherto inexistent at the EU level, and initiate a comprehensive action for its prevention.

Project contracting partner and coordinator is Ministry of the Interior (Latvia) and project partners are “Shelter “Safe House”” (Latvia), “Living for Tomorrow” (Estonia), “Caritas Lithuania” (Lithuania), Immigrant Council of Ireland (Ireland), Ministry of the Interior (Slovakia), The European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) (Finland).

DISSEMINATION AND ADVOCACY PLAN ESTONIA

In recent years, the instances of involvement of Estonian citizens in sham marriages have increased significantly. Alarmingly, some of those cases share many common elements of trafficking in human beings. Nevertheless, public awareness of sham marriages and the potential connection to human trafficking remains relatively low.

Despite the relatively low number of sham marriages contracted in Estonia, the trends point to an increasing number of young women from Estonia being recruited into sham marriages that are registered in other European countries with the promise of easy profits. The most popular destination countries for the organisation of sham marriages involving Estonian women were Cyprus and Ireland, followed by occasional cases in the United Kingdom, the Netherlands and Italy.

Various means of deception, abuse of vulnerability and a number of threats are actively used against the Estonian women during the recruitment process. The sham marriages encountered were registered abroad and the third-country nationals who were suspected of being party to the sham marriages have never entered Estonia. For that reason, obtaining information on the occurrence of those marriages might be difficult and usually is possible only after information about marriages concluded abroad is forwarded to the Estonian Population Registry.

The collected information revealed that the women involved in sham marriages possess different levels of awareness about the conditions of the marriage. Based on this, several types of sham marriages were identified:

- marriages by deception, where one party believes the marriage intentions to be genuine;
- “business” sham marriages, where both parties actively seek to benefit from the marriage, by gaining either financial reward or migration preferences;
- deceitful sham marriages, where one of the parties has been misled about the conditions of the marriage during the recruitment process;
- exploitative sham marriages, where one party (generally a woman holding an EU passport) is actively recruited into the marriage through deception, coercion or abuse of vulnerability, and is subjected to different forms of exploitation in the process.

Deceitful and exploitative sham marriages might share some common features and it is not always clear whether an individual case should be identified as mere migration fraud with unintentional negative consequences for women with EU citizenship, or as an instance of exploitation with elements of trafficking in human beings. In order to draw a distinction between the two, thorough investigative practices must go hand in hand with efficient cooperation between the different stakeholders. The evidence of exploitation becomes visible only over a longer period of time, since women involved in sham marriages typically start seeking assistance when they want to terminate the marriage.

The information collected also provides compelling evidence of the major involvement of a third party in the organisation of the sham marriages. Female recruiters who claim to have previously entered into sham marriages themselves have approached Estonian women on social media, presenting it as an easy way to make money. The financial reward that is promised to the women for marrying a third-country national during the recruitment process

is never paid to the victims of exploitative sham marriages. The recruiters disappear after the contraction of the marriage, leaving sponsors trapped in the matrimony and not being capable of obtaining a divorce on their own.

Additionally, many online groups dedicated to advertising individuals offering and looking for EU citizens to enter into sham marriages were encountered on Russian-language social media. We were not able to locate corresponding Estonian-language social media groups. Although the identified cases of sham marriages featured women of both Estonian and Russian ethnicities, the latest cases allow us to suggest that at the moment the Russian-speaking population in Estonia is more actively recruited into sham marriages abroad. Stakeholders also reported instances of Estonian women involved in prostitution and with histories of drug abuse being targeted by the recruiters with offers to enter in sham marriage.

Encountered cases of exploitative sham marriages demonstrated a number of elements evident in the exploitation of the women, allowing us to explore links between sham marriages and trafficking in human beings. According to Article 2(3) of Directive 2011/36/EU, exploitation includes, as a minimum, the exploitation or prostitution of others or the use of other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs. In contrast to the traditional notion of sham marriage as a crime against the state, exploitative sham marriages incorporate a number of basic elements of trafficking in human beings (e.g. act, means and purpose) and should be perceived as a crime against the person. The process begins with the act of recruitment and transportation of Estonian women to the country of destination. Unfair means of coercion and deception are used to constrain the women's freedom of choice and control them. Finally, the operation is executed with the purpose of exploitation of the women by forcing them to perform unlawful and disagreeable duties (i.e. conclude a sham marriage).

Despite a relatively low number of convictions for trafficking in human beings in Estonia, several forms of trafficking have been identified by the law enforcement authorities since the introduction of the updated provision on human trafficking in 2012. The crimes that qualified as trafficking offence in Estonia during 2012–2015 also featured the first sham marriage related court case in Estonian legal practice. In this case, a woman recruiting Estonian women into sham marriages abroad was found guilty of human trafficking under § 133 subsection 2 of the Penal Code for placing two or more persons in an exploitative situation. The court decision stated that the two women recruited for sham marriages in Ireland were forced to perform unlawful and disagreeable duties, were dependent on the receiving party and could not leave the country without the consent and assistance of the organisers. This example allows us to refer to existing case law when demonstrating links between exploitative sham marriages and human trafficking.

With regard to suspected sham marriages to third-country nationals that were registered in Estonia, the foreign spouses were primarily citizens of Russia, Ukraine and Georgia. However, according to the stakeholders interviewed, none of these marriages indicated the existence of deception or coercion and respectively could rather be identified as "business" sham marriages. The involvement of third parties (recruiters and organisers) in the organisation of those marriages was not established.

RECOMMENDATIONS

Based on our analysis, we have compiled the following recommendations, which could be included in the National Development Plan for Reducing Violence, engaging the Ministry of Justice, the Ministry of Social Affairs, the Ministry of Education, and NGOs involved in the prevention of human trafficking and provision of assistance to the victims:

- Examine the possibility of modifying Estonian legislation in order to establish the criminal responsibility of facilitators of sham marriages (the current practice situates the victim's testimony as primary evidence, creating a heavy burden on the victim).
- Include indicators of exploitative sham marriages into the pre-existing national guidelines for the identification of victims of trafficking in human beings.
- Organise annual multi-institutional training for specialists (law enforcement, municipal social workers and consular officers) in order to facilitate the exchange of experiences on the issues of prevention of trafficking in human beings and identification of exploitative sham marriages.
- Apply preventative measures specifically developed for trafficking in human beings involving sham marriages and organise educational events on the issue for national minorities, students of vocational schools and minors in the foster care system.