

**The Commission on Security and Cooperation in Europe
U.S. Helsinki Commission**

**Politically-Motivated (In)justice?
The Extradition Case of Judge Venckiene**

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Introduction

Chairman Wicker, Chairman Smith, Ranking Member Cardin, and Ranking Member Hastings, thank you for convening this hearing. I am grateful for the opportunity to assist you and engage in a dialog regarding the subject of this hearing, which touches upon an area of my scholarship: child sexual exploitation. I want to begin my comments with a candid statement that I participate in this dialog without a side in this debate. It is my intent to assist the Commission in putting some of the case in a context and offer some reference points in the field of child sex trafficking.

Child Sex Trafficking

As the Commission well knows, 2000 was a watershed year for the fight against human trafficking. Here in the United States, Congress embarked on a powerful effort to end human trafficking with the enactment of the Trafficking Victims Protection Act (“TVPA”) of 2000. This journey has continued through numerous amendments and the TVPA’s subsequent reauthorizations in 2003, 2005, 2008, 2013, and 2015. Through this Act and its reauthorizations, Congress properly cast a comprehensive definition of human trafficking generally and sex trafficking specifically. In so doing, Congress also ensured that these definitions reflect our ongoing and improved understanding of the realities of human trafficking by encompassing trafficking in all its forms. Similarly, these definitions also seek to capture the many different types of traffickers victims encounter.

To that end, the TVPA defines sex trafficking to include the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a

commercial sex act.¹ A commercial sex act is not only a situation where a purchaser buys a human being in cash from a third-party trafficker. Rather, in the definition of a “commercial sex act,” Congress sought to encompass the many forms of sex trafficking that occur, including what has been referred to as intra-familial sex trafficking. A commercial sex act includes any sex act on account of which “*anything of value* is given or received *by any person*.”² Therefore, the law recognized from early on that the commercial nature necessary for an act of sexual exploitation to be sex trafficking simply required the exchange of the sex act for anything of value; and that exchange can be between any two people, not necessarily only a purchaser and victim of trafficking. Congress also classified the sex trafficking of a minor as a “severe form of trafficking” and defined it to include sex trafficking in which the person induced into the commercial sex act has not yet attained the age of 18.³ Congress further demonstrated this comprehensive approach to sex trafficking of minors by including in the criminal offense of sex trafficking not only those who knowingly engaged in the aforementioned acts.⁴ It also explicitly includes a person who “*knowingly benefits financially or by receiving anything of value*” from participating in a sex trafficking venture knowing that the person is a minor and will be caused to engage in a commercial sex act.⁵ Thus, American law recognizes the prevalence of intra-familial sex trafficking and seeks to specifically combat it.⁶

The United States is not alone in this approach to child sex trafficking. The United States joins with most other nations in ratifying the Protocol to Prevent, Suppress and Punish

¹ 22 U.S.C. § 7102(10) (2015).

² § 7102(4) (emphasis added).

³ § 7102(9).

⁴ 18 U.S.C. § 1591(a)(1) (2018).

⁵ § 1591(a)(2).

⁶ See e.g., The Traffickers, THE NATIONAL HUMAN TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/what-human-trafficking/human-trafficking/traffickers> (last visited Sept. 25, 2018).

Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Crime (“Palermo Protocol”). This Protocol defines trafficking in persons even more broadly to include:

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.*⁷

Not only does the Palermo Protocol explicitly identify giving or exchanging benefits to the person who has control over the trafficking victim, but it defines exploitation to include “at a minimum the exploitation of prostitution of others or other forms of sexual exploitation.”⁸ As in the United States, the Protocol requires no force if the victim is a child under the age of 18.⁹

Therefore, sex trafficking occurs under American law when any person receives a benefit or something of value in exchange for providing another for a sex act. Internationally, when one with control over a child receives a benefit in exchange for consenting to the child’s sexual exploitation, sex trafficking occurs. This language encompasses intra-familial sex trafficking, which is a significant problem throughout the world.¹⁰

Interest of the Commission

Prior to the year 2000, the international community did not explicitly label human trafficking as the particular form of sexual exploitation it is today. However, since the Palermo

⁷ G.A. Res. 55/25, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, at Art. 3(a) (Nov. 15, 2000) [hereinafter Palermo Protocol].

⁸ *Id.*

⁹ *Id.*, art. 3(c)-(d). As a signatory to the Protocol, the United States is required to establish measures to prevent and combat trafficking in persons. *Id.* art. 9.

¹⁰ Press Release, *Family Members Linked to Nearly Half of Child Trafficking: New IOM, Polaris Data*, INT’L OFF. OF MIGRATION (Nov. 28, 2017), <https://www.iom.int/news/family-members-linked-nearly-half-child-trafficking-new-iom-polaris-data> (last visited Sept. 25, 2018).

Protocol and the TVPA, the many manifestations of child sex trafficking have become more widely understood and documented. That being said, forms of trafficking previously considered child sexual assault often remain unidentified and are addressed purely as child sexual assault cases. While the line can be obscure between the traditional understanding of child sexual assault and child sex trafficking, an essential distinction is the presence of a commercial component. That commercial component, however, is not limited to a direct exchange of currency for a sex act. Rather, it encompasses situations in which any person receives a benefit or something of value in exchange for a sex act of that or another person. In the intra-familial trafficking context, that includes when a family member receives a benefit and consents to their child's sexual exploitation.

Given the leadership of the United States in combating all forms of sex trafficking, but particularly child sex trafficking, the Commission has an interest in paying particular attention to any indications of child sex trafficking in this or any case.

In Judge Venckiene's case, assertions have been made that the child at issue in this case was not only sexually abused, but that the child's mother was complicit in allowing the abuse.¹¹ In the course of the Commission's review of this case, should it encounter evidence of this compliance being in exchange of something of value, or that the victim's mother received a benefit for her consent to sexually abuse her daughter, such information would suggest a case involving child sex trafficking. Complicity in sexual abuse is not in and of itself trafficking but could, instead, be considered conspiracy to abuse, a serious enough crime in and of itself.

¹¹ See *Neringa Venckiene v. United States*, No. 18-2529 (7th Cir. 2018), Jurisdictional Memo. at 2; Brief and Appendix for Petitioner-Appellant at 7, 8, 15-16.

However, if evidence exists that the abusers provided financial and other benefits to the mother of the child victim, this child sexual abuse could also implicate child sex trafficking.

As the Commission considers the *Venckiene* case on questions of extradition and asylum, it may also wish to consider the possible implications of child sex trafficking, should it encounter such evidence. While child sexual abuse in all its forms is an assault on the dignity of a child, the matter of child sex trafficking is one of import, not only to the United States, but globally.

Conclusion

Given the leadership of the United States in combatting trafficking in persons, and Congress' specific role in crafting comprehensive trafficking legislation and ratifying the Palermo Protocol, instances of child sex trafficking have great import in American policy. If evidence of a benefit based compliance emerges in the Commission's review of any case, such evidence should be closely examined. Therefore, as the Commission considers this complex case in its many implications, it also should examine it through a lens of child sex trafficking, should the investigation indicate a commercial sex act. As such, I would suggest whatever remedy the Commission seeks, it do so within this context.