

Stop Traffick! International Conference: Deconstructing the Demand for Sexual Services: Prevention of Exploitation through Prostitution and Sex Trafficking

Vilnius 19 June 2014, Lithuania Seimas

Dr. Venla Roth, Senior Adviser, Office of the Ombudsman for Minorities / National Rapporteur on Trafficking in Human Beings

Ladies and Gentlemen, Colleagues, Friends

I'd like to begin by thanking you for this opportunity to speak here today at this important conference. My speech will focus on the question of how to reduce demand for sexual services from trafficked victims. First, I'm going to talk about how Finnish legislation has sought to prohibit the buying of sexual services from victims of procuring or trafficking. I will then go on to discuss the challenges that have arisen from this. Finally, I will look at prostitution policy in broader terms; in the context of neoliberalism, free markets and money, on the one hand, and the protection of victims of sex trade, on the other.

1 Since the beginning of 2009, the Ombudsman for Minorities has acted as Finland's National Rapporteur on Trafficking in Human Beings, with the responsibility to monitor and promote action against human trafficking. We make efforts to detect shortcomings and problem areas in action against trafficking in human beings and issue recommendations on how to further develop this action and improve victims' position and rights. In this capacity, we also issue statements on what measures should be taken to prevent trafficking in human beings.

2 In 2006, Finland introduced a legislative amendment which criminalised buying sexual services from a person who is a victim of procuring or human trafficking (*abuse of a victim of sex trade*). The purpose of this is to protect victims of sex trade as the objectification of human beings as merchandise in the manner that is typical of human trafficking and procuring clearly violates human dignity. This provision involves *mens rea*. This means that it is essential to consider whether the buyer knew that the person selling sex is a victim of

procuring or trafficking. Some doubts about this were expressed even at the time: there were concerns that it might be difficult to obtain the evidence required to prove that the purchaser acted intentionally and therefore to apply the penal provision, in practice.

3 Now this discussion has taken a new turn in Finland. In June 2012, the Supreme Court issued a decision concerning the exploitation of a victim of sex trade. The Supreme Court dedicated a considerable portion of its justifications to evaluating the evidence. In its decision, it dismissed the charge on the grounds that it did not consider that the defendant had committed the act intentionally. The Court took the view that there was no evidence suggesting that the purchaser had been aware of the vulnerable position of the injured party, even though the person in question was a young woman of foreign background, with poor language skills and diminished mental capacity. This decision clearly indicates that the current provision in the Criminal Code of Finland is insufficient for preventing human trafficking and organised procuring in the manner perhaps envisioned by the legislators.

4 In January 2013, the Ministry of Justice commissioned the Faculty of Law at the University of Helsinki to conduct an evaluation of the functioning of the partial ban on purchasing sexual services. In their report, the university scholars concluded that the current partial ban does not discourage prostitution, procuring or trafficking. The situation favours sex buyers who avoid gaining any knowledge of the prostitute's circumstances but are familiar with the letter of the law. In addition, the scholars were of the opinion that the partial ban provides an incentive for criminals to disguise prostitution operations to resemble independent prostitution. Therefore, the scholars recommended the Government to amend the law so that all buying of sex would be criminalized. A total ban would be clear and send the message that prostitution is highly harmful for persons engaged in it and that a considerable percentage of prostitution is connected to human trafficking or procuring. If not political will for enacting a comprehensive sex purchase ban can be found, the scholars recommended that the current ban would be improved; the provision should be amended to include violation of the partial sex purchase ban though negligence. The scholars added that a person buying sex while fully

aware that the seller is a victim of human trafficking should be considered tantamount to rape and sexual abuse.

5 It seems clear to the National Rapporteur on Trafficking in Human Beings that the existing provision in the Criminal Code on the abuse of victims of human trafficking does not work, since it fails to meet the objectives set by the legislator — the most important of which is the protection of victims of sex trade. It is therefore imperative to change this provision. Whatever the political resolution will be, we need to decrease and prevent trafficking and prostitution and the growth of the sex market. We have to make sure that sex buyers will be held liable for their exploitative deeds, and — to be honest — I don't believe that a political compromise will be enough to do that or to discourage human trafficking.

6 In my opinion, however, what we are discussing here goes beyond banning the purchasing of sexual services; indeed, this is a question of where prostitution policy is going. Generally speaking, we can distinguish two different approaches to prostitution in Western Europe: one seeks to reduce prostitution, possibly even abolish it, while the other aims to legalise prostitution and/or brothels. The outcomes of political decisions and regulatory models are subject to constant debate. In fact, it may very well prove impossible to find an ideal solution to this issue affecting society — one that would take all perspectives into account while avoiding the negative repercussions of the chosen approach.

7 In any event, it seems to Finland's National Rapporteur on Trafficking in Human Beings that the liberal prostitution policies pursued by some central European countries have failed in their endeavours to protect people in prostitution and channel prostitution towards the legal markets. Quite the contrary, the prostitution markets appear to have expanded, and trafficking in human beings continues, also in the legal brothel sector. It has become difficult for the law enforcement and prosecution services to combat human trafficking. Women in prostitution has become simple commodities, subject to the basic market law of supply and demand; brothel owners and managers try to make as much profit as possible out of them. Politics based on legalising prostitution has failed to achieve its objective to guarantee better conditions for those who sell sex. In some countries, this kind of liberal prostitution politics has

strengthened the control of the organised crime over a large part of the sex industry. At the same time, as far as banning the purchasing of sexual services is concerned, there has been no conclusive evidence suggesting that the banning decision taken by Sweden would have had major negative consequences for women in prostitution but has instead decreased the attractiveness of Sweden as profitable market for prostitution, procuring and trafficking. Banning the purchasing of sexual services appears to impact society in a number of positive ways, for example by promoting equality between women and men. Less and less men are willing to buy sex. This point is far from irrelevant in this discussion. By changing people's attitudes and behaviour, we will eventually change society, too. The view of decriminalising prostitution that has lately been advocated by some international organisations, is, in my mind, based on the same understanding of the nature of prostitution. That prostitution is a form of work and that it should be protected as such. It is difficult for me to see the differences in practice because especially when these advocates support making parts of procuring legal. How do these facilities under the model of decriminalisation differ from brothels in the end? I am afraid that the consequences of the politics based on decriminalisation would not be that different from that of legalisation.

8 In my opinion, the discussion around prostitution policy can be summarised into three major questions. First, who is allowed to talk about this issue? Is the voice of the most vulnerable people really heard, and are we listening to that voice? Second, who or what group are we talking about when making decisions on the direction of prostitution policy? Who should our political resolutions and legislation primarily seek to protect? And third, what do we really mean when we talk about prostitution — sexuality, and whose sexuality, business activities, gender equality, violence, crime? What does our prostitution policy seek to accomplish, and how? What is the protection objective of legislation? Should we, in fact, concentrate on the majority of women, men and children who are the most vulnerable to exploitation in sex trade instead of those few who declare that they do not need our protection? In Finland, for example, it has been estimated that even 70 to 80 percent of those engaged in prostitution are foreigners or of foreign origin.

9 There has been talk about free and strong individuals who make autonomous, rational and conscious decisions about their own lives — decisions that government authorities should not interfere with. This approach is based on market-driven neoliberalism which underlines the priority of individual responsibility over the protection obligation of the State, focusing on the relationship between the market and the individual, rather than between the political system and the individual. The protection of privacy and negative rights to freedom is at the core of this process of "creating a free individual".

10 The neoliberal approach appears to be reflected in prostitution policy, too: there is the idea of free individuals, independent of the power structures of society, who make their own decisions, free from government intrusion. This increased individual power entails responsibility for one's own life — possibly also guilt and shame over decisions made. How empowering or liberating are these decisions in the end? Freedom must come with real opportunities; otherwise the most vulnerable individuals are at risk of getting overridden.

11 While it is true that individualism offers considerable positive consequences in the form of increased individual rights, it also makes identification and dismantling of gender-oriented power structures difficult. Individualism does not recognise the fact that people may not necessarily have equal negotiating positions in respect of each other, nor the fact that one party may have a weaker social or other position in respect of the other. An individualistic approach will not solve the complex problems of our society, nor will it foster true equality. It will not be able to prevent or stop developments harmful to equality. And, it will not be able to eliminate injustices in the structures of society. What we need is public discussion on prostitution policy. Each and every one of us should be interested in what kind of prostitution policy we make, since the decisions will have implications for society as a whole. Prostitution is not just a private matter covered by the domain of privacy. We need to be careful not to again separate the private and public spheres from each other. We feminists have managed to demonstrate that violence and exploitation cannot be privatised.¹

¹ For more information on equality and neoliberalism, see the articles of Nousiainen and Pylkkänen in Kantola, Nousiainen and Saari, eds: *Tasa-arvo toisin nähtynä — Oikeuden ja politiikan näkökulmia tasa-arvoon ja yhdenvertaisuuteen*. Gaudeamus 2012.

12 The European Union and the Council of Europe are also making efforts to discourage demand for services by victims of trafficking through legislative and strategic instruments. Both the EU Directive on trafficking and the Council of Europe Trafficking Convention entail a request that purchasing services from victims of human trafficking be made punishable. I would like to refer to the Bota's report for the Parliamentary Assembly of the Council of Europe. In that report, Mr Bota sought to analyse prostitution politics and its role in reducing and preventing human trafficking for sexual exploitation. Bota concluded that policies prohibiting the purchase of sexual services are those that are more likely to have a positive effect on reducing human trafficking. Bota also referred to studies made by some economists. The conclusion of these studies is clear; legalising prostitution seems to lead to an increase in human trafficking. Many European countries are currently amending their legislation by shifting the focus to sex buyers, and even Canada as a response to Bedford is in a process of amending its legislation by criminalising the purchase of sex and thereby to curtail the demand.

13 I'd like to remind you that a successful prostitution policy is the sum of a variety of measures. No measure alone will be enough. We must take action to improve the identification of those needing help and their referral to assistance. We must also step up our fight against crime and improve the protection of those in prostitution from violence and exploitation. In Finland, it seems that violence has become a "normal" part of prostitution — it is not intervened in, and its victims receive neither help nor justice. Often, their position as victims of violence is not even recognised, and their need for help is not reacted to. One of the reasons for this indifference is that women are considered to have chosen prostitution despite its horrific conditions. Sexually exploited victims of human trafficking who I encounter in my work deserve better. In terms of guaranteeing victims' rights, particular attention should be paid to cross-border procuring of foreign women, which often appears to involve features of human trafficking, violence, the threat of violence or other illegal controlling.

14 In broader terms, prostitution policy also covers action to prevent prostitution, trafficking and the associated crime, and to reduce the size of the sex market. I think that human trafficking and the related exploitation can be

prevented by discouraging demand for the services provided by victims of human trafficking. Prostitution and human trafficking are, after all, clearly interconnected. In implementing prostitution policy measures, we must take steps to ensure that those in prostitution don't become subject to control measures and that they don't need to be afraid of the authorities. On the contrary, we must strengthen the tools and channels that make receiving help possible.

15 I want to conclude my speech by stressing that the primary focus of prostitution policy should be directed at the majority of those women, men and children who need society's protection the most urgently. Prostitution is built on a highly hierarchical structure, with actors having varying opportunities and resources to fulfil their rights. In taking decisions on prostitution policy, we therefore have to make sure that the voice of the most vulnerable people does not go unheard.

Thank you for your attention.