

Dr. Venla Roth, Senior Adviser, Office of the Ombudsman for Minorities / National Rapporteur on Trafficking in Human Beings, Address at Transnational Stop Traffick! Conference

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, 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 prostitution*). 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 were expressed already at that time: it might be difficult to obtain the evidence required to prove that the purchaser acted intentionally and therefore to apply the penal provision.

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 prostitution and the related lower threshold for *mens rea*. 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. 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 ban on purchasing sexual services. In their report, the university researchers took the view that the purchasing of sexual services should be fully criminalised.

4 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. As I mentioned earlier, it has been proposed that the purchasing of sexual services be fully banned. As a compromise, it has also been proposed that the purchasing of sexual services could be considered an offence if the purchaser should have known that the person selling sexual services is a victim of trafficking or procuring. Under this proposal, the offence would be based on the sex buyer's negligence. Whatever the political resolution will be, we need to decrease and prevent trafficking and prostitution and the growth of the sex market. The European Union and the Council of Europe are also making efforts to discourage demand for services by victims of trafficking through legislative instruments. They entail a request that purchasing services from victims of human trafficking be made punishable.

5 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 Europe: one seeks to reduce prostitution, possibly even abolish it, while the other aims to reduce the health-related and social problems arising from prostitution. 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.

6 In any event, it seems to Finland's National Rapporteur on Trafficking in Human Beings that the liberal prostitution policies pursued by many 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. 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. 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.

7 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?

8 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".

9 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 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.

10 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 distinguish private and public sphere again (for more information on equality and neoliberalism, see the articles of Nousiainen and Pylkkänen in Kanto, Nousiainen and Saari, eds: *Tasa-arvo toisin nähtynä — Oikeuden ja politiikan näkökulmia tasa-arvoon ja yhdenvertaisuuteen*. Gaudeamus 2012).

11 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. 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.

12 In broader terms, prostitution policy also covers action to prevent prostitution 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 — a fact also recognised by the National Rapporteur on Trafficking in Human Beings of the Netherlands. 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.

13 I want to conclude my speech by stressing that the primary focus of prostitution policy should be directed at those 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.