

Human Trafficking and Prostitution Policy - A European issue?

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There are many definitional, practical and legal difficulties surrounding the topic of human trafficking. The topic itself is diffuse as are the ways it is dealt with on an international, European and national level. To make things worse, reviewing the reasons why people are being trafficked, sexual abuse is, with a representation of 96%, the foremost reason and it can be argued that countries policy on prostitution could increase or decrease human trafficking. The question arises if this issue needs to be and effectively could be dealt with on a European level and what types of difficulties this brings forth. The legal definitions on human trafficking shall be discussed as well as the three main types of applied prostitution policies and this discussion shall be placed within the current 'active' European approach to fight human trafficking.

Keywords: Human Trafficking, Prostitution Policy, European Union

1. Introduction

On the 25th of February 2014, the European Parliament agreed upon the non-binding resolution on combating Violence Against Women (2013/2004(INL) submitted by Mary Honeyball.¹ This resolution favours the Nordic model of legalising the sale of sex while criminalising the buying of sex, over other models currently applied by countries within the European Union. This however is not without discussion as the positive effects are heavily discussed and criticised. This European recognition of the seriousness of human trafficking and sexual exploitation is an important step in the fight against human trafficking. Sexual exploitation, being the foremost important reason for human trafficking to take place and victimising mostly young women and girls seems a logical area to focus interest on. Before a deepening can take place however, it is necessary to take a closer look at the concept of human trafficking from a more general perspective.

2. Human Trafficking: A Definitional Dilemma

The issue of human trafficking, especially that of women for the purpose of sexual exploitation has risen up on the political agenda and is increasingly becoming more critical for countries to act upon ever since the European Court of Human Rights, in the case of *Rantsev v. Cyprus and Russia*² established that human trafficking is a breach of Article 4 of the European Convention of Human Rights (ECHR).³

¹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0126+0+DOC+XML+V0//EN> (22/08/2014).

² *Rantsev v. Cyprus and Russia*, App. No. 25965/04, Eur. Ct. H.R. (2010).

³ UNODC (2010), Kara, S (2011) p.124.

Human trafficking, however, cannot be understood outside of the social, economic, historical and political conditions of the phenomenon itself as well as the different European countries. These conditions are:

- Increasing globalisation and inequality within and between advanced industrial societies and those countries where poverty is epidemic;
- War and conflict in various regions of the world;
- The global subjugation of women;
- The growth of telecommunications and expansion of information technology;
- The trans-nationalisation of the sex industry;
- The reconfiguration of Europe.⁴

This article will address the latter two conditions as the foremost points of interest within the political debate regarding the issue of human trafficking. This debate has been ongoing ever since human trafficking and women's rights have been on the international agenda which is since the beginning of the 20th century. After an interest standstill due to the two great wars, interest was renewed in the early 60's - 70's of the previous century and from that moment on it has been high on the political agenda and subject of continues debate. One of the key discussions focusses on formulating a workable and generally accepted definition of the trafficking of human beings (in most literature abbreviated as THB). In 2001 the definition for THB was formulated in the (Palermo) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and states: 'Transnational Human Trafficking is the recruitment, moving or reception, of a person under coercive or deceptive conditions for the purpose of exploitation'.⁵ This now widely accepted definition of human trafficking has been supplemented by the elements of act, means and purpose which are as follows:

- recruitment, transportation, transferring, harbouring or receipt of a person (act);
- means of threat, use of force, coercion, abduction, fraud, deception (means);
- purpose or act of exploitation, including sexual exploitation, forced slavery and slavery like practices (purpose).⁶

This addition, just like the definition provided in the Palermo protocol, uses the term exploitation which in itself is seen as an unclear concept. Exploitation, as defined in article 1 of the Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings is: "*At a minimum, exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs*" and this equals Article 3a of the UN protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime except for including a general purpose of exploitation and except for the trafficking in human beings for the purpose of the removal of organs. This narrowed down definition leaves room for further discussion, especially within the conceptualisation of sexual exploitation. In 1991, Susan Edwards defined sexual exploitation as: "*A practise by which (a) person(s) achieve sexual gratification or financial gain or advancement through the abuse of a person's sexuality by abrogating that person's human right to dignity, equality,*

⁴ Melrose, M. & Barrett, D. (2006) p. 115.

⁵ Rijken, C. (2009).

⁶ Werson, H. & Goutbeek, F. (2005).

autonomy and physical and mental well-being".⁷ This more in-depth feministic definition makes it possible to directly link sexual exploitation with a breach of fundamental human rights⁸ knowingly, Article 3 ECHR, the prohibition on torture, inhuman or degrading treatment, Article 4 ECHR, the prohibition of slavery, servitude, forced or compulsory labour and Article 8 ECHR, the right to respect for private life.⁹ Basically relevant are same three key components as discussed before, knowingly: The act (what is done), the means (how it is done) and the exploitative purpose (why it is done).¹⁰

The current European standard and definition on the trafficking of human beings has been set out in Directive 2011/36/EU Article 2 §1 and states: 'The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those 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'.

Paragraphs two and three of Article 2 define the two key elements of vulnerability and exploitation as follows: "*Vulnerability is a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved*" (§2) and "*exploitation is prostitution or 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*" (§3). Due to the gross breach of human dignity and the physical and mental integrity of its victims human trafficking is seen as a direct violation of Article 4 ECHR.¹¹

Europe and more specific, the European commission feels the need to take a leading role in the fight against human trafficking, as there is a lack of harmonisation of legal frameworks to combat human trafficking effectively and efficient.¹² The Stockholm program entitled: "*The An Open and Secure Europe Serving and Protecting Citizens*"¹³ and more specific the set-out strategy entitled: "*The Eradication of Trafficking in Human Beings 2012-2016*" is one of the steps taken to ensure its leadership and guidance . For this a European Union anti-trafficking coordinator has been appointed in the person of Myria Vassiliadou whose task it is to coordinate the implementation of the strategy laid out in the Stockholm program and supplementing strategies.¹⁴ Synchronous, the European Commission's implemented various decisions. Decision 2011/36/EU Directive on preventing and combating trafficking in human beings and protecting its victims (which replaces Council Framework Decision 2002/629/JHA affirms in Article. 3 that trafficking in human beings comprises serious violations of fundamental human rights and human dignity of victims) is the one currently in force. The main issue however is the implementation of these actions by member states.¹⁵ In order to achieve these goals the European Commission's Decision of March 2003 set up a consultative group, known as the 'Experts Group on Trafficking in Human Beings' (2003/209/EC).

⁷ Barry, K. (2013).

⁸ Rijken, C. & Volder, E. de (2010).

⁹ Stoyanova, V. (2011).

¹⁰ Aranowitz, A., Theuermann, G. & Tyurykanova, E. (2010) p.17.

¹¹ Bik, R. (2013).

¹² Hancilova, B. & Massey, C. (2009).

¹³ OJC 115, 4.5.2010, p.1.

¹⁴ European Commission (2012).

¹⁵ Mendes Bota, J. (2014).

In turn, the Council of Europe has been active in adopting various anti-trafficking initiatives since the 1980's. Amongst them are the 1991 seminar on Action Against Trafficking in Women, considered as a violation of human rights and human dignity, the 2005 convention on Action against Trafficking in Human Beings (CETS NO. 197) which aims to Prevent trafficking, Protect the Human Rights of victims of trafficking and Prosecute the traffickers and is applicable to all forms of trafficking whoever the victim and whatever the sort/type of exploitation. These three P's are now situated at the centre of all actions against human trafficking.¹⁶ Apart from the conventions, recommendation NO. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation and the LARA project (2002-2003). Besides these initiatives the council also tries to raise awareness on the problem of human trafficking as such and on the recognition of victimisation. They urge for victim support in all effects and try to initiate a system of prevention by using the concept of responsabilisation which means that this strategy of crime control aims to shift primary responsibility for crime prevention and public security away from the state and towards businesses, organisations, civil society, individuals, families and communities.¹⁷

Beside these initiatives, the Parliamentary Assembly of the Council of Europe has adopted the following trafficking and forced prostitution relevant texts:

- Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member States;
- Recommendation 1526 (2001): A campaign against trafficking in minors to put a stop to the east European route;
- Recommendation 1610 (2003): Migration connected with trafficking and prostitution.

Both the anti-trafficking coordinator and the commission have access to a Group of Experts on Action against the Trafficking of Human Beings (GRETA) which exists out of independent experts and members of the Committee of the Parties. GRETA will monitor, evaluate and may give recommendations to member states which lack effort in the implementation of anti-trafficking legislation.

3. A topic surrounded by narratives

One of the foremost issues regarding the conceptual discussion on human trafficking is what is described by Snajdr as a master narrative which he [in line with the authors cited by him: Lyotard (1984) and Bamberg (2003)], sees as a pre-existing form of interpretation which is reproduced out of a sociocultural context and therefore normalised.¹⁸ This can be supplemented by the idea suggesting that the fight against trafficking is driven by activists using mass media to construct a false truth on trafficking and its victims.¹⁹

According to Oude Breuil *et. al.* there is more than one narrative as all of the actors represent the phenomenon of human trafficking for the sex industry in different ways.²⁰ This representation is based

¹⁶ Mattar, M.Y. (2008).

¹⁷ Muncie, J. (2008) p. 357.

¹⁸ Snajdr, E. (2013).

¹⁹ Tyldum, G. (2010).

²⁰ Oude Breuil, B.C., Siegel, D., Reenen, P. van, Beijer, A. & Roos, L. (2011) p.31.

upon socio-political, cultural and historical contexts which, as mentioned previously stand at the heart of the debate. In general there are three dimensions in which the narratives, based upon these contexts, are being produced. The first one is the legal narrative which focusses on international and national law and which is shaped by polarisation between the abolitionist and the sex work debate on human trafficking and prostitution. The second, the enforcement narrative relates to the situation as it is being perceived by law enforcement. Within this narrative the following misconceptions exist; on the one hand the existence of stereotypes, *i.e.*, a trafficking situation always exists out of a situation of clearly distinguishable victims and perpetrators, and on the other hand the emphasis on repression which implies that detection and prosecution are the main goals within combating trafficking with an emphasis on the idea of traffickers being part of complexly organised networks.²¹ The third narrative is ethnographic and based upon the fact that so little research on the topic has been done but what has been done adds knowledge of the accurate situation to the discussion and alters perceptions on the first two by using the concept of the self-becoming prophecy²² as an explanation for the wrongful assumptions out of the first two narratives. Bovenkerk *et. al.*²³ suggest that criminals are aware of the existence of these narratives and they know how to make good use of them as a scare-tactic or by becoming a mythological being without actually having to act.²⁴ Finally history itself has helped to shape and reinforce these narratives²⁵ as the focus with anti-trafficking campaigns have always been on female victims as sexual exploitation is commonly seen as the most degrading and intrusive type of trafficking conceivably possible.²⁶ This has led to situations in which international agreements failed as they were set out to fight forced prostitution and neglecting other forms of sexual exploitation like domestic servitude and arranged marriages.²⁷

Many of the difficulties in researching human trafficking arise out of a) the sheer amount of available data and b) the major differences within this data on the topic of human trafficking and c) the continuing limitations of verifying the available data.²⁸ One of the points of interest is the discrepancy in estimates concerning trafficking victims and traffickers and the number of prosecutions. This has attributed to the hidden and criminal nature of trafficking²⁹, definitional ambiguities³⁰, poor methodology³¹ and a total lack of understanding of the trafficking process.³²

These issues create a soil for the concept of moral panic and the underlying vicious circle of short-term action-reaction policy.³³ This type of policy bears the danger to neglect both victims' and suspects' rights

²¹ Ibid.

²² Thomas, W.I. & Thomas, D.S. (1928) p.572.

²³ Bovenkerk, F., Siegel, D. & Zaitch, D. (2003).

²⁴ Oude Breuil, B.C., Siegel, D., Reenen, P. van, Beijer, A. & Roos, L. (2011) p.42.

²⁵ Goderie, M. & Boutellier, H. (2011).

²⁶ Alvarez, M.B. & Alessi, E.J. (2012).

²⁷ Ray, N. (2006).

²⁸ Musto, J. (2013).

²⁹ Wylie, G. (2006).

³⁰ Newman, E., & Cameron, S. (2008).

³¹ Sanghera, J. (2012).

³² Segrave, M., Milivojevic, S., & Pickering, S. (2009) *'Sex trafficking: international context and response'* Devon: Willan Publishing; Roguski, M. (2013) *'Occupational health and safety of migrant sex workers in New-Zealand'* Wellington: Kaitiaki Research and Evaluation p. 19.

³³ Sanghera 2005 p.185 as cited by Oude Breuil, B.C., Siegel, D., Reenen, P. van, Beijer, A. & Roos, L. (2011) p. 32.

and treatment as it only focusses on increasing the perceptions of safety and the peoples' general consent. This abolitionist view³⁴ as implemented by the United States (US) as applied policy on both immigration and prostitution gives a good example of this ideology.³⁵ Billions of dollars are spent on border control and keeping unwanted strangers from entering American territory. However, the lucky few who are able to obtain illegal entry, with or without the aid of smugglers, are from that moment on vulnerable and easily exposed to exploitation as they have lost the interest of the government and are seen as nothing more than unwanted criminalised aliens without any rights to facilities etc.³⁶

4. Human Trafficking and Prostitution Policy

The traditional three P's: "*Prevention, Protection and Prosecution*" as formulated within CETS NO. 197, also stand at the basis of the United States (US) Trafficking Victim's Protection Act.³⁷ These three P's emphasise the idea of victims' protection, this however is a wrongful presumption as protection exists out of incarcerating an illegal minor alien who is forced to work as a prostitute, for her own well-being and protection³⁸ the initial goals should be questioned as this person is clearly a victim who is entitled to help and a treatment as such. In this example, to be more specific, the person is not only a victim of human trafficking but also a victim of a failing system.³⁹ In turn this type of social victimisation can heighten victim's reliance on sex-trade facilitators and traffickers as they can protect them from the system itself and avoid incarceration and all negatives linked to it.⁴⁰ Within the implementation of European guidelines and within *i.e.* prostitution policy by a system of prohibition, member states should take these secondary effects in consideration.

It is currently the trend for authorities/governments of member states to adapt ideas from the Swedish model.⁴¹ This model is based on the ideology of the sexual difference model which recognises essential differences between the genders and argues that the law should be gender sensitive and support the equal valuing and cultural status of women.⁴² Even in the Netherlands politicians are calling for a shift towards the Nordic thought. The question which arises is: Why? Let start by looking at the basis for the Swedish model which was set out in 1986 during the UNESCO conference in Madrid.⁴³ This was the first time a discussion was started which mentioned the criminalisation of buyers of sexual services rather than punishing the ones selling it.⁴⁴ It was stated that men who buy sex from women commit a violent act against them and therefore they should be punishable by law.⁴⁵ This idea of repression disguised as feminist prevention served as compensation for a lack of gender equality in Sweden in that period of time.

³⁴ Outshoorn, J. (2005).

³⁵ Bernstein, E. (2010).

³⁶ Musto, J. (2013).

³⁷ Mattar, M.Y. (2008).

³⁸ Musto, J. (2013).

³⁹ Bernstein, E. (2010); Mir, T. (2013).

⁴⁰ Musto, J. (2013).

⁴¹ Pierette Pape, Europeans Women's Lobby Européen des femmes 23/01/2014.

⁴² Bekteshi, V., Gjermani, E. & Hook, M. van (2012) p.487.

⁴³ Polisen (2000).

⁴⁴ Gould, A. (2001).

⁴⁵ Skillbrei, M.L. & Holmström, C. (2011).

Scholars, policy makers and all others who oppose a system of legalisation portray this model as the solution as it would not only create a basis for equality between the sexes but it would also reduce human trafficking and sexual exploitation of its victims.⁴⁶ The latter however is not supported by any statistics as Sweden is one of the countries who have been unable to produce and supply recent and more important, relevant and validated information on the nature and extent of human trafficking and forced prostitution to Eurostat and other data gathering institutions.⁴⁷ The Swedish model is nowadays less prominent as it has merged into a Nordic system as Iceland, Norway and Finland have opted for an adapted version of the Swedish model.⁴⁸ As the Swedish model has been known to criminalise clients, it has also increased the risk of victimisation of sex workers. This model was set up to be effective not only in Sweden but also to be exported which could be seen as successful strategy considering the current trends in prostitution policy in France and the United Kingdom next to the broad Nordic implementation of the Swedish model.⁴⁹ To avoid similar situations of increased vulnerability and victimisation amongst sex-workers, an option could be to legalise prostitution but to criminalise pimp, to place a ban on pimping so to speak as this stresses out the causal relationship between victim and perpetrator and could make it easier and more effective to act upon. This relationship is less visible when assessing prostitution out of an economic model and more specific the woman as an entrepreneur and the punter as a consumer.

Basically all currently adapted prostitution policies, in terms of political and social considerations and application, are gender based and set up with the intention and aim to abolish or limit sexual abuse and victimisation emanating from human trafficking.⁵⁰ Apart from the Scandinavian model, the Utrecht Conference on Trafficking in Persons of 1994 called for a system of decriminalisation of prostitution in order to improve working conditions and health and safety aspects for the people involved in the sex industry. This conference and the thoughts it portrayed served as the basis for the Dutch policy of legalising work as a sex worker and the lifting of the brothel ban. This concept in turn was based upon a healthcare orientated consideration within the ideology of total female emancipation, as women should be able to freely choose a profession in sex work and operate freely within society, free of pimps, extortion etc. This orientation was based upon the liberal principles set out by Mill 'over himself, over his own body and mind'⁵¹, rather than the Swedish criminal law approach which was based upon the exploitation hypotheses which sees women solely as mere victims. This exploitation hypothesis consists of three pillars. The first pillar is radical separatist lesbian feminism which argues that all heterosexual sex is exploitation. The second derives from the ideology of Marx and therefore called Marxist feminism which states that all work is exploitation and the third pillar is religious evangelism that argues that all non-procreational sex is wrong⁵² and by doing so harms victims of human trafficking.⁵³

There are serious contradictions between these two apparently opposite directions, both represent a position in the on-going battle of second wave feminism which started in the late 1970's and now is renewed within the field of human trafficking.⁵⁴ On the one hand, you have neo-abolitionism, the

⁴⁶ Bindel, J. & Kelly, L. (2003).

⁴⁷ Skillbrei, M.L. & Holmström, C. (2013).

⁴⁸ Skillbrei, M.L. & Holmström, C. (2011).

⁴⁹ Skillbrei, M.L. & Holmström, C. (2013).

⁵⁰ O'Brien, C. (2009).

⁵¹ Brooks-Gordon, B. (2010) p.555.

⁵² Ibid p.254.

⁵³ Chelsen Vicari, Christian Post 16/01/2014.

⁵⁴ Roguski, M. (2013).

followers of which uphold the idea of sex work never being voluntary.⁵⁵ This is based upon the exploitation hypothesis, and because of this notion, neo-abolitionists perceive all forms of sex-work to be a form of patriarchal oppression and essentially an act of violence towards women.⁵⁶ While on the other side you have the anti-abolitionist movement which is propagated by sex workers' rights groups, who perceive sex work as a consensual choice. The contradictions in both standpoints made it difficult to construct an all accepted view on trafficking and 'forced' sex work, as sex work in the eye of a neo-abolitionist can never be a free choice and therefore always is forced and women need to be protected from it by the authorities.⁵⁷ Across the ocean in the United States of America, the neo-abolitionists claimed a victory with the enactment of the Victim of Trafficking and Violence Protection Act (VTVPA), which provided a legislative ground to combat trafficking in persons prohibiting all forms of prostitution. While countries like Canada, Australia and New Zealand were leaning more towards an anti-abolitionist direction. In the basis every discussion on modern day slavery, whether it involves sexual exploitation or not is not a battle against abstract economic forces of crime but a political and moral struggle over the kind of society we want to live in.⁵⁸

The two things these three totally different ideologies have in common are the following. On the one hand, they all aim to abolish the sexual exploitation of women. On the other, the period of time during which they were devised and utilized. Both the Dutch orientation based on legalisation/regulation and the policy of prohibition in the United States of America, came into effect in 2000, while the Swedish adopted their system of abolition a year before in 1999. This equals the moment the UN protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime was concluded and which eventually entered into force in 2003.

Human trafficking being a worldwide phenomenon and a type of serious transnational organised crime with serious social effects, it is almost impossible to understand why different governments and other relevant parties have been opposing each other so long on different routes of fighting this social issues. Only recently, in 2010, the Council of the European Union has adapted its priorities and intends to focus on a more fundamental and hands-on approach to act upon this type of serious organised crime which infringes upon fundamental human rights as stated in the Stockholm Programme and Directive 2011/36/EU.⁵⁹ This European turnaround opens the way for another discussion which could eventually lead to what is described by MacKinnon as adequate policy.⁶⁰ This policy is made up of three elements, the first being decriminalizing and supporting people in prostitution, the second being the criminalisation of buyers of sex from trafficking victims and finally, effectively criminalizing third-party profiteers.⁶¹ This MacKinnon concept uses the shared protective feminist ideology of women's protection as a basis while it applies the anti-abolitionist thought of decriminalisation and legislation, as seen in the Netherlands, and combines it with the Nordic orientation based upon the neo-abolitionist thought.

⁵⁵ Chuang, J.A. (2006).

⁵⁶ Lee, M. (2011).

⁵⁷ Roguski, M. (2013).

⁵⁸ Neil Howard, *The Guardian* 07/11/2014.

⁵⁹ Rijken, C. (2009).

⁶⁰ MacKinnon, C.A., (2011).

⁶¹ MacKinnon, C.A., (2011) p. 307.

This theoretical idea however is more easily said than done as proven by the recent attempt by the European Union to choose a standpoint favouring the Nordic approach to be implemented as a European prostitution policy and a way to structure the fight against human trafficking. This however failed to pass voting at the European parliament at the beginning of this year.

5. Conclusion

The European Union could be a key player in the fight against human trafficking but only if it is willing to respect and harmonise members states backgrounds and interests to such an extent that a compromise can be reached. Unfortunately, despite numerous efforts most actions are still directed and dealt with out of a national perspective either shaped through prostitution policy, or more populist tendencies. It is time for the European Union to set aside national differences and to look beyond political populist interest and concentrate on setting up an effective and widely supported policy, not based on sex work, but rather on increasing cooperation between law enforcement agencies or establishing an anti-human trafficking European taskforce which coordinates international cooperation actively instead of passively by gathering and sharing relevant information.

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