



Is prostitution a violation of human rights?

Elizabeta Imeraj

Albania, Prosecution of serious crimes, Tirana, Republic of Albania

Abstract:

Prostitution is and has long been a constant presence both in society and in the political debate, a debate that is still highly topical, both in Scandinavia and internationally. The statutory prohibition against the purchase of sexual services in Albania, some Nordic countries have chosen to follow, now stands in marked contrast to the corresponding example German legalization of prostitution. Worldwide, states have historically made several attempts to prevent the occurrence of prostitution of a variety of different reasons and with a variety of approaches. The reasons have always been diverse, ranging from the preservation of morality to the maintenance of public order and protection against sexual exploitation of women.

Women and children are transported today worldwide to sell sexual services and behind the globalized sex trade, there are several strategic actors with the help of illegal activities will take the opportunity to exploit the fact that there is a demand for sexual services by thus maintaining a supply. In view of globalization, and with the improved transport and communications networks, as both trafficking and migration increased. This increase has led to human trafficking and prostitution reinstated on the political agenda in most states and supranational bodies. The trend over the years has caused extensive debate about prostitution and its relation to human trafficking for sexual exploitation. The work of the international human rights bodies have focused on the trafficking and exploitation of prostitution under slavery-like conditions and therefore has not addressed the problem of the fundamental reasons for, and importance of, prostitution, from a human rights perspective.





Problem definition, purpose and question

Today Albania, as well as the international community, on prostitution and trafficking for sexual exploitation in terms of utilization, but also through the legal regulation. This despite the fact that the market demand, vulnerable individuals, criminal organizations, factors that lead to development are closely linked. It usually refers to voluntary and forced prostitution. In Albania, the Government stresses that it is immaterial whether women entered prostitution voluntarily or under compulsion, but there are still countries in Europe and in the world where the person in prostitution is criminalized, as well as countries that have legalized the sex trade completely.

I believe this is very problematic, not least in view of the initiatives and conventions adopted internationally for preventive work against trafficking, but also initiatives for gender equality and violence against women. My thesis aims to investigate the relationship the two phenomena have to each other and to human rights. This is to determine what differences there are, legally and socially, to investigate the differences in views on prostitution and trafficking for sexual exploitation is likely to hide the problems behind the prostitution and the violations it might mean for people who are in it. For the purchaser of sex seems prostitution completely divorced from organized crime, people trafficking often represent, and this raises the question whether it seems problematic to combine the two concepts or whether it is rather problematic to do so.

Based on the human rights study aims therefore to investigate whether persons in prostitution will be covered by them and whether, and if so, what positive obligations States under international law can be considered to have against these people. This is to investigate whether it is possible to require that states criminalize the buying of sex, either to fulfill the conventions that require the prevention of human trafficking for sexual exploitation or to live up to the commitments states committed themselves to counter gender equality, gender discrimination and violence that prostitution can often mean. Something that could lead to an ann an attitude towards prostitution on the international political level, which could also be a step forward in efforts to get human beings to cease.





The terminology

It is important to clarify the definition I use in my essay regarding certain terms, this is for the reader to assimilate the text but that there is no misunderstanding.

Prostitution is undoubtedly a concept which has several meanings, which is due to the concept often includes both ethical and moral values. Thus, there is no uniform meaning of the term and it is problematic to try to define. National Board defined in a report from 20077 prostitution as an act where "at least two parties buy or sell sexual services against payment (usually financial) which is a prerequisite for the sexual service". I believe that the basic definition of the concept of prostitution is consistent with my view on what is included in the actual situation as such. If I'm in the paper refers to a situation other than this, it will be made clear in the text.

As regards the designation of the parties who are involved in prostitution, so it is sensitive. I use the term buyers of sex and the sex but avoid using sex workers, then it can easily give the impression that prostitution represents a business transaction between two equal parties. Furthermore, I believe that concepts like "the prostitutes' may be perceived stigma and incorrect because it easily suggests that prostitution define the person, even if it is only something that the person in question is doing. I have therefore chosen to use by a person in prostitution or the person who has been in prostitution. Purchase of sexual services, hereafter the buying of sex, refers to a purchase of any type of sexual services, it could therefore impinge multiple types of services and the "one obtains casual sexual relations in return for payment", according to Swedish legislation the definition of a purchasing sex and the is also consistent with my understanding of the situation.

Regarding trafficking for sexual exploitation, I have chosen to use the definition contained in the Palermo Protocol and in the Swedish legislation. This is because it is undoubtedly the most widespread definition worldwide, and that it is consistent with my overall perception of what human trafficking as a phenomenon means. Article 3 of the Palermo Protocol defines human trafficking as "the recruitment, transportation, transfer, harboring or receipt of persons by means of threat or use of force or other forms of coercion,



abduction, fraud, deception, 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 exploiting that person. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery and practices, servitude or the removal of organs. "

Theory

The complexity of the issues, or all the complexity that embraces phenomena and research on them, has meant that it is necessary to use some other scientific disciplines beyond the jurisprudence of my interpretation and analysis (Sandgren, Claes, Jurisprudence of the essay writers - Threads, materials, methods and argumentsp. 43). Purchase of sexual services and human trafficking for sexual exploitation is a gendered in all material respects (Andersson, Ulrika, his (words) or her, Bokbox Publisher, Lund, 2004, pp. 21).

Thus it is natural for me to use a gender theory to try to understand the obvious, but even subtle, power relations between women and men in society. The way the law is problematized on the basis of gender varies over time and is linked to how the law is designed (Hirdman, Yvonne, SOU 1990: 44 Power and Democracy pp. 73-118).

However, was not designed right the only thing that is decisive, but the purpose is to problematize the reproduction of the male norm although the legislation is in fact gender neutral, which naturally requires a different approach than the right political demands for a formal equality of gender (Smith, 2001, p. 9. 15 Hirdman, SOU 1990: 44, pp. 73-116).

The theory can be divided into three levels, at the individual level as highlighted role of the individual, and where applicable the right, among other social, interpersonal norms.

At the structural level, the law may be placed and highlights underlying factors such as poverty and gender inequality (Svensson, Eva-Maria, 2001, s. 22). On the discursive



(epistemological) level displays more general and "self-evident truths", it shows the relevance of what is formulated through language, symbols and norms, for instance, be the Western view of the individual as an abstract and free subjects (Svensson Eva-Maria, 2001, p. 22.). Furthermore, the theory that our biology, and our social gender, are inseparable and this creates differences and hierarchies between the sexes in society that is characterized by the subordination of women and male superiority. This Allocation is done through a 'gender contract which is changing continuously, gender is thus not something that exists in itself but is always created by the conditions of the time we live. But regardless of its historical and cultural context so implies gender contract that women and men are given a framework for action (Svensson Eva-Maria, 2001, p. 22). Hirdman believes therefore that women and men only by their gender are given separate positions in society, and argues that such a separation is the power of creation and that to some extent legitimize the actions of individuals by distinguishing them from others (Hirdman, SOU 1990: 44 p. 78). Henchman, thereby using the theory of gender contract as an analytical tool to understand the difference between men's and women's empowerment strategies and also says that all people constantly torn between the objectives of freedom and symbiosis in relation to other people (Hirdman, 1988, p. 55). Power can be abused by restricting someone's access to or provide the means to achieve these goals.

The gender perspective in law, I perceive, and thus use it as my analysis, mainly as a problematization of the liberal individual concept. Gender theory to me therefore means that a tool that to see how perceptions of gender affect women's and men's rights. The theory is simply a way for me to try to understand the causes of the unequal power relationship between women and men. Furthermore, I will avail myself of an overall proper sociological theory when, in addition to legal aspects, also take into account social and societal aspects (Hyden, Hakan, sociology of law and jurisprudence, Student, Lund, 2002, pp. 42-46). Right sociology analyzes the rights of society and have the task to examine which demands social conditions down the law but also, conversely, how social relations are affected by the law (Mathiesen, Thomas, right in the community, students, Lund, 2005, p. 16).





Previous research

Research on human trafficking and prostitution is not entirely unproblematic as researchers in the field often advocate either a radical feminist vision or a normalising view in prostitution. The field should be so loaded with controversy as this. There are several researchers who have either addressed the issue directly or indirectly and jurisprudential research on the sex trade various criminal situations are primarily interested in gender researchers. Regarding the existence of newer research on people who are in prostitution so is relatively limited. I will in this chapter to present some research on the subject I have chosen for various reasons, including two treatises which show different perspectives on prostitution and indirectly also its relationship to human rights.

Statistical research showing the correlation between the legalization of prostitution and human trafficking for sexual exploitation will be described below. The essay will, with new statistical research as well as new documents in international law to address new and thus perhaps more arguments in the research to try to illustrate the similarities and links between the two phenomena to examine the States any obligation to criminalize the purchase of sex.

Jenny Westerstrand is Jur. Doctor of Law and writes in his dissertation between men's hands from 2008 on prostitution and trafficking for sexual purposes in the international law and the international debate about the phenomenon looks. Jenny studied the most important documents in the area but also the understanding of sexuality and gender, but also women's human rights. In her thesis she discusses how women are constructed as legal entities of prostitution discourse and how this affects different understanding of trafficking and prostitution. Through her dissertation, she shows that it is incredibly complex issues involving these phenomena, and that therefore there is no black or white in the debate.

By considering prostitution as an expression of male violence against women as it depicts the prostitution as an act. By contrast, look at prostitution with a larger and broader gender-theoretical perspective and instead see it as a gender uneven set expression of a relationship, is that prostitution market as an institution in the community instead of an act so



overlooks the fact it is an analytical distinction that is vital for the understanding of the motives behind the Swedish sex purchase law and the arguments in favor of the criminalization of sex purchases. Westerstrand further describes "The harm principle" which covers two aspects; that legal entity and the State domains and where the line is between. In a rule of the individual should be given a right to control their own life without state interference, within what is called the individual's right realm.

This freedom to decide is present as long as no other individual's right intruded and only when it is done should the state intervene and when the individual whose proper sphere is being violated. Westerstrand for a very interesting discussion in their dissertation in which she suggests a different perspective on the debate surrounding prostitution focus on the person's free will and thus focus on consent. She believes that if instead we understand the purpose of the Sex Purchase Act from the perspective that society does not accept that women's bodies are commercialized it will not be important to determine whether the woman should be considered as an individual who is capable of taking their own decisions. She writes that "What I think is important for my investigation is Westerstrand presents the conclusion where her conclusion" is that a fundamental tension within normalizing. Speaking of prostitution and trafficking. The defense of women's autonomy and right to their bodies when the talk is about prostitution, and the basic meaning on the analytic focus on the woman in prostitution, are a defense for the buyer's logic when the talk is about trafficking. "She also criticized prostitution normalization advocates for their focus the woman / the individual is completely isolated from the structures that exist in society invisible intrinsic relationship which undeniably is between them. I think she believes that men thus made invisible as actors in the sex trade and prostitution is portrayed as only a female affair thus, in turn, is a negative consequence for the creation of women's legal personality, which Westerstrand dissertation largely about. To demonstrate the analytical difficulties that normalization of prostitution proponents emphasize that apply her prostitution debate and its arguments on the trafficking discourse to interpret normalizing the approving, according Westerstrand, "impossible logic"





Susanne Dodillet - Is sex work?

Susanne Dodillet is a historian whose dissertation examined the issue of prostitution should be seen as a work and looked at Swedish and German prostitution policy from the 1970s onwards. The investigations that preceded the sex purchase law has been criticized from various quarters to be substandard, Susanne Dodillet is one of the critics of the Sex Purchase Act and perpetuates in his treatise *Is sex work?* that the inquiries made in the area not taken account of the persons in prostitution erfarenheter.⁴² Dodillet compare how people who are in prostitution are considered as victims and protected by the Sex Purchase Act in Albania, while "sex workers" in Germany is seen as professional professional women and can operate the legal brothels. Dodillet asks himself in his thesis how the two otherwise so similar to Western societies can differ so radically in prostitution policy.

Dodillet linked to the vision that believes that prostitution is a result of an autonomous individual's choice and she maintains that this view may well be combined with a feminist quest for a quest for the liberation of stigmatized women. She stands in opposition to the beliefs that she believes is normative in the prostitution debate in Albania. Especially regarding her main conclusion that Swedish scientists and investigators did not examine how the persons who are in prostitution perceive their situation and their needs, and that the only condition that the persons who are in prostitution is involuntary victims who do not have the ability to determine their own best.

I believe that the thesis which is the newest research on specifically this area in terms of the liberal views on prostitution, is biased and influenced by the author's own views and I believe that criticism of it, ⁴⁷ is correct in all material respects.

Although I believe it is important also to highlight another side view of prostitution, I think the arguments for her thesis does not quite agree. However, I add that I agree that women in prostitution not automatically be regarded as involuntary victims, but it is important to look at the underlying factors and the resulting consequences which may only manifest themselves later in life.





Conclusion

Sex trafficking accommodates all trade conducted in people for sexual purposes and trafficking differs from other criminal activities in many ways. First and foremost, when it is seen as a social problem in a structural and not merely an individual phenomenon. In the sex trade, there are also situations where human trafficking, prostitution and pimping are few. This part will to begin with historical describe prostitution and trafficking for sexual exploitation as a social phenomenon to give the reader an idea of how the perception of these phenomena have changed over time and how phenomena are perceived today. There will be a limited description of history for several reasons and I do not therefore claim a complete description. Furthermore, I also this part to look at phenomena related to human rights and the different directions it is in terms of this relationship, as well as watch parties in the sex trade and the causes and consequences that trade creates.

In the article does legalized prostitution Increase human trafficking? Analyzed the impact on the flow of trafficking in countries where prostitution is legalized. The article and the study is done according to economic theory that expresses that there are two polar effects, scale effect and substitution effect. The scale effect of legalized prostitution leads to an increased prostitution market, which in turn increases the trafficking for exploitation. While the substitution effect reduces the demand for women victims of trafficking but with the effect that the demand thereby increasing the 'legal' indigenous women in prostitution. The empirical analysis made in the article comprises a cross section of up to 150 countries indicating that the scale effect is more prominent than the substitution effect. On average, the countries where prostitution is legal experience greater number of reported inflows of trafficking. The researchers in the article also believes that, regardless of prostitution direct impact on human beings, may be other arguments against a ban on prostitution. The likely negative effects on the States inflow of trafficking derived from legalized prostitution can also benefit those who argue that banning prostitution, not least because it demonstrated reduces the influx.





At the same authors write that working conditions for people in prostitution would probably be improved by legalizing and notes that these issues open up discussions about individual freedom to choose.

Literature

- Sandgren, Claes, Jurisprudence of the essay writers - Threads, materials, methods and argumentsp. 43.
- Andersson, Ulrika, his (words) or her, Bokbox Publisher, Lund, 2004, pp. 21 ff.
- Hirdman, Yvonne, SOU 1990: 44 Power and Democracy pp. 73-118.
- Svensson Eva-Maria, Gender research in law, 2nd ed., Higher Education, Lena Grafiska AB, Kalmar, 2001, p. 10.
- Hirdman, gender system: reflections on women's social subordination, Obstetrics and Scientific journal, p. 49 to 63.1988, p. 51 and Hirdman SOU 1990: 44, p. 78.
- Hyden, Hakan, sociology of law and jurisprudence, Student, Lund, 2002, pp. 42-46.
- Mathiesen, Thomas, right in the community, students, Lund, 2005, p. 16.
- Vienna Convention on the law of treaties signed in Vienna on 23 May 1969 Entered into force on 27 January 1980.

