

Dr. Venla Roth:
Identifying the trafficking victims and examining the child's best interest in the Dublin procedure: Current state of affairs and future challenges in Finland

**Speech at the Conference on Child Trafficking -
A Crime Calling for a Child Protection Response, Oslo, June 20 - 21**

Ladies and Gentleman,

Trafficking in human beings was politically recognised as a Finnish problem only five years ago in 2005. Finland was identified as a transit and to some extent as a destination country for hundreds of trafficking victims every year. Finland has recently adopted a considerable number of measures to address trafficking in human beings: the Finnish Penal Code has been amended by special penal provisions concerning trafficking, the Aliens Act has been amended by sections that enable trafficking victims to be issued with a reflection period and a residence permit, and the system of victim assistance has been established for the purpose of providing assistance and protection for trafficking victims.

I work at the Office of the Ombudsman for Minorities. The Ombudsman for Minorities has acted as a National Rapporteur on Trafficking in Human beings since the beginning of 2009. The competence of the Rapporteur includes both human trafficking and related phenomena, which gives us a wide mandate. The national rapporteur has a mandate to report to the Government annually and once in four years to the Parliament on his or her observations and to give recommendations. (mandate)

Ladies and Gentleman,

In June last year, the Finnish National Rapporteur issued her first report to Parliament. In her first report, the Rapporteur evaluated adopted anti-trafficking measures. This examination sought to examine how the rights of trafficked persons are implemented and what types of obstacles the Finnish system may present. The Rapporteur's aim was to highlight the victim's perspective and the impact of legislation, practices, or non-intervention on the victims and the implementation of their legal protection. In this way, the Rap-

porteur strived to promote the identification of victims of human trafficking and the implementation of their rights, such as assistance and protection.

The Rapporteur sought to evaluate three of the most essential aspects of anti-trafficking measures: (1) system for victim assistance, established in 2007; (2) procedures related to the victims' residence and their removal from the country; and (3) the criminal procedure and the application and interpretation of the penal provisions on trafficking and related provisions, such as procuring. The Rapporteur collected and analysed the necessary information on human trafficking and the related phenomena as well as challenges to activities to combat trafficking. The Rapporteur obtained information from other authorities, courts of law, and third-sector actors, and complemented this documentation with a wide-based round of hearings and formal and informal meetings. Information was also gathered by meeting and assisting victims of trafficking themselves.

The most important observation of the report was that human trafficking and related phenomena of serious exploitation are more common than we often realise. However, the victims are not identified: they are not necessarily identified at all, or they are not identified as victims of trafficking in human beings. Sometimes the authorities fail to recognise the victimhood and react accordingly. As a consequence of this failure to identify victims, the victims are denied their statutory rights, such as services of the system for victim assistance. As the Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, adopted in 2005 by the Committee of Ministers, states that a failure to identify a trafficking victim correctly will probably mean that victim continues to be denied his or her fundamental rights. The non-identification also means that the prosecution becomes denied the necessary witness to gain a conviction of the perpetrator of trafficking in human beings. The Convention is currently under a process of ratification in Finland.

Since 2005, a little more than 20 child victims of trafficking have received assistance and protection from the system of victim assistance. As regards victims who are minors, cases include transit cases. In these situations, the minors were in transit to another country when the authorities apprehended them in Finland on sus-

picion that they might become victims of human trafficking in the destination country. The first case was about transporting three young Chinese to the United Kingdom via Finland. The pre-trial investigation discovered that the journey had been financed with a loan taken out by their parents, and the victims intended to pay back this debt by working in the country of destination. The nature of the work they were intended to do in the United Kingdom remained unclear, but the authorities believed that the victims could have been forced to prostitution.

The second similar case concerned young people from Russia, who apparently were being transported to Norway and Germany via Finland. The pre-trial investigation discovered that one of the minors was intended to end up with her husband. The marriage had been organised between the families, and the authorities suspected a forced marriage.

Some minors included in the system of victim assistance have already been victimised in a country other than Finland. At least in one case, the authorities suspected that a minor might have been coerced into a forced marriage in Finland.

Not all suspected victims of human trafficking have been included in the system of victim assistance, because the case has not been regarded as meeting the statutory definition of human trafficking in the Penal Code. This raises concerns in our office, as the case descriptions show, however, clear indicators of sexual or labour exploitation. Use of threats, restricting the victim's freedom of movement, and indebtedness emerge in the case descriptions. In the decision-making process, the authorities have attached significance to the fact that the victim had been victimised in another country and the law enforcement authorities have not been able to detect the perpetrators. The victims have been returned to the country where he or she had been victimised. The fact that the person has been a minor has not changed the end result of the decision. The decision has been based on the Dublin Regulation determining the EU Member State responsible for examining an asylum application.

The Dublin Regulation is about sharing responsibility between the EU Member States, about which state examines a person's asylum application. The aim is to have the application of each asylum

seeker examined, as a rule, in only one EU Member State. The Dublin procedure, thus, makes it possible to refuse entry to asylum seekers and return them to the country that, under the Regulation, is responsible for processing the application. Although the purpose of regulation, as such, is perfectly justifiable and reasonable, the risk is that victims of human trafficking end up being refused entry based on the Dublin Regulation to a country where they fall victims of human trafficking and where the possibility of re-victimisation is high.

Ladies and Gentleman,

When compiling the report, the Rapporteur regarded as particular risk groups minors to be removed from the country and returned either to Greece or Italy. In order to investigate the matter, the Rapporteur analysed all of the so-called Dublin decisions from January to August 2009. Although the number of cases analysed by the Rapporteur was rather limited, the Rapporteur finds that the results obtained give cause for concern.

Several of the applicants reported that they had been subjected to sexual exploitation, violence, or political persecution in their home countries. Because of the harsh conditions, they had decided to depart for Europe aided by a smuggler. The conditions of smuggling often were inhuman, and the persons were not able to describe their journey. Some of them reported that the smugglers or other persons had taken the documents from them. The applicants also mentioned that they owed money to the smugglers or their family members, who had paid for their journey to Greece or Italy.

In nearly all cases examined by the Rapporteur, the applicants had also been subjected to physical or sexual violence in Greece or Italy. In the majority of the cases, the applicants said that the violence they encountered had been either perpetrated or condoned by the authorities, or an indirect consequence of inadequate reception conditions for asylum seekers.

In addition to violence, the documents clearly indicated that human trafficking had already taken place in more than half of the cases. In some of these cases, the applicant said he or she was a minor. The exploitation had taken place in prostitution or work in a bakery

or on a farm, or the applicants had been forced to carry drugs. The applicants usually reported that the exploitation was preceded by being deceived about the quality of the work and conditions, exploitation of their dependent position, or abduction.

In most cases, the applicants said that due to inadequate reception facilities in Greece or Italy, they had been forced to live on the street, where they had met the person who offered them work that led to exploitation. Lacking better options, they had gone with that person and ended up as victims of exploitation. Many of the victims had been tied to exploitative situations by means of aggravated physical and sexual violence, threats, being locked up in the facilities where the exploitation took place, or by promises of arranging entry into a safe European country. In some cases, their identification documents had also been taken. The applicants had as a rule been able to escape the exploitative situations with the assistance of a third party, which also had assisted them in arranging their travel to Finland.

What seems to have emerged as a challenge in the cases analysed by the National Rapporteur is that the Dublin procedure did not enable an extensive enough examination of the victim's situation to discover the possibility of human trafficking. In many cases, the documents show that the authorities took no measures concerning ambiguities in the applicants' travel arrangements, becoming victims of sexual or labour exploitation, physical and sexual violence, abductions, or deception as to the nature of the work that came up.

Almost no information on examining the possibility of human trafficking was recorded in the decisions to refuse entry, even in those cases where the applicant's lawyer described the exploitation as human trafficking. Neither did the decisions indicate how informing and protecting a person were to be ensured if a decision were made to refuse entry. Such questions as whether there is a system for victim assistance in the relevant country and how well it works in practice had not been answered.

Instead of reacting to indicators of human trafficking, the decisions ended up describing the reception conditions for asylum seekers in Greece and Italy. It was stated that these countries as European Union Member States were committed to respecting fundamental

rights and urged the applicants to address the authorities of the state responsible for processing the asylum application about their possible health problems or violations of rights. Furthermore, it has been noted that law enforcement and criminal investigation must be done in the country where the offence has been committed - and so the victim must be returned.

Ladies and Gentleman,

It is important to note, however, that although the Dublin Regulation makes it possible to also return minors to another Member State, it does not eliminate the requirements in international obligations and national legislation to assess the best interest of the child in all action taken by the administrative authorities.

Another study published by our office in 2010 demonstrates that the best interest of the child is not always evaluated sufficiently in the asylum procedure. In the asylum procedure, children are treated primarily as asylum seekers and only in the second place as children. Children may be refused the right to their identity or the possibility of family reunification without assessment of the child's best interest.

The Council of Europe Convention on Action against Trafficking in Human Beings, signed by Finland in 2006, states that in case the authorities have reasonable grounds to believe that the person has become a victim of human trafficking, this person may not be removed from the territory of the country until the identification process has been completed (Art. 10) and the victims must be offered the services listed in Article 12 of the Convention. The Convention specifies that there does not need to be absolute certainty of committed crime of human trafficking but "reasonable grounds for believing" someone to be a victim is "sufficient reason" not to remove his or her from the country until completion of the identification process. Furthermore, the Convention prohibits removing a suspected victim of human trafficking from the territory of a state party - and this means both to the country of origin and, more importantly in this context, to a third country.

The Convention additionally specifies that in potential cases of trafficking in human beings, an assessment of the child's best interest

requires a risk assessment also in situations where a minor could be returned to his or her country of origin or a third country. If the return is not in the best interest of the child, the states should refrain from returning him or her. The Convention also states that when the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child (Articles 16 and 10).

It, thus, appears that in the Dublin procedure cases analysed by the Finnish National Rapporteur, the best interest of the child had not been appropriately taken into consideration. The process of determining the child's best interest was not adequately documented in the decisions to refuse entry. The observations made by the Rapporteur give rise to concern over the implementation of the rights of minor asylum seekers, but from the perspective of implementing the rights of the victims of human trafficking, the situation is even more serious. Taking into consideration the serious violence and aggravated exploitation reported by minor asylum seekers in the cases analysed by the Rapporteur, the current procedure is not adequate to guarantee that the best interest of the child is appropriately determined. This kind of procedure seems not to be in line with the international obligations, such as the aforementioned Council of Europe Trafficking Convention, which is an important human rights instrument.

Ladies and Gentleman,

The greatest share of human trafficking is believed to be associated with international migration, but trafficking in human beings can take place internally within a country. Last autumn, the Finnish National Rapporteur convened a meeting together with NGOs, which provide low threshold services for minors and other vulnerable groups of people. Several representatives of NGOs described in their presentations various forms of sexual exploitation of minors and young adults. In some cases, this exploitation was so serious that it could meet the definition of human trafficking. NGOs told about gang rapes, purchase of sexual services from minors in public and private places, as well as on paedophile rings operating in the Internet. NGOs considered that homeless people, drug addicts, minors in custody and minors from disturbed families with alcohol and drug problems include in the risk groups which can fall victims of

sexual exploitation, pandering and even trafficking in human beings.

The NGOs told about minors and young adults of Finnish origin who has been victimised either in Finland or transported to other European countries for prostitution or other forms of sexual exploitation. They might have been ordinary students who have had dreams about becoming a model in Europe. Trafficking in human beings is not always a transnational crime.

Just to remind you that trafficking is not necessarily connected to organised crime: victims of trafficking can be exploited by ordinary employers, relatives, family members, even mothers, boyfriends or husbands. Based on international experience, the so-called "lover boy" recruitment method is frequently used in human trafficking. An intimate relationship entices the victim to trust the exploiter. The victim is not prepared for the idea of the person he or she loves trying to exploit him or her. I have met some of these victims, and I can say that the trauma caused by the betrayal is deep. Leaving this type of exploitation may also be more difficult because of the close relationship between the victim and the perpetrator.

Ladies and Gentleman,

To conclude, trafficking in human beings is a complex and multifaceted problem, and thus combating it is challenging in all circumstances. Trafficking, as it is determined today, is a rather novel concept and the anti-trafficking framework is an international creation, which requires time to transform into operational and functional anti-trafficking strategies and activities on the national level. The Finnish anti-trafficking work is still at the stage of development. I believe that trafficking can be counteracted by taking small steps. The fog around the issue of human trafficking will gradually dissipate but it takes time, patience and hard work. The journey will be long, but some progress is already in view.

To conclude, just to mention some steps forward:

1. Assistance and protection of trafficking victims cannot be dependent on whether the traffickers are identified and convicted. Under the Council of Europe Trafficking Convention, the states par-

ties must offer support to each victim of human trafficking in their territory. The Convention also states that the obligation to guarantee the identification process is independent of any criminal proceedings against those responsible for the crime of human trafficking. A criminal conviction is therefore unnecessary for either starting or completing the identification process. Indicators of human trafficking are sufficient reason to help. It should be remembered that the identification process is tricky and it takes time. Without proper identification, the rights guaranteed by the international legal instruments are purely theoretical and illusory.

2. Child protection measures must be included in assistance of trafficking victims. Minor victims of human trafficking are children who should receive all the normal child protection measures as all other children in need of that kind of measures. It should also be remembered that trafficked persons can have children who are in need of child protection measures due to the trauma of a parent and his or her incapability of taking care of the child.

3. Trafficking in human beings can take place within a country, and it is not necessarily connected to organised crime: victims of trafficking can be exploited by ordinary employers, relatives, family members, even mothers, boyfriends or husbands. Measures addressing domestic trafficking are needed.

4. Appoint a national rapporteur or equivalent mechanism in every country with a wide and independent mandate and sufficient resources. The tasks of an independent reporting mechanism include gathering and analysing information with a purpose to evaluate the anti-trafficking strategies and activities and to make recommendations for improvement. This critical assessment promotes the gradual development and eventual success of anti-trafficking work. Rapporteur is able to increase and spread information on child trafficking, which is largely an invisible phenomenon.

Ladies and Gentlemen, dear audience, you are in a position to improve anti-trafficking work and make change happen!

Thank you!