

TALLINN UNIVERSITY OF TECHNOLOGY

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**LEGALIZED PROSTITUTION IN FINLAND FROM THE
PERSPECTIVE OF THE VICTIMS OF HUMAN TRAFFICKING
FOR SEXUAL EXPLOITATION AND IMPLEMENTATION OF
THE DIRECTIVE 2011/36/EU TO FINNISH CRIMINAL CODE**

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I declare that I have compiled the paper independently
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CETS	Council of Europe Convention on Action against Trafficking in Human Beings
DIRECTIVE	Directive 2011/36/EU on prevention and combating trafficking in human beings protecting its victims
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EU	European Union
EUROJUST	The European Union's Judicial Cooperation Unit
EUROPOL	European Police Office
MS	Member State
NGO	Non-governmental organizations
OCGs	Organized Crime Groups
THB	Trafficking in Human Beings
TCN	Third Country Nationals
UN	United Nations
UNODC	United Nations Office Against Drugs and Crime

ABSTRACT

This thesis argues about trafficking in human beings for sexual exploitations and forced prostitution in Finland and how the Directive 2011/36/EU on prevention and combating trafficking in human beings protecting its victims has implemented to Finnish national law, more specifically to Finnish Criminal Code? The thesis is studying what are the main problems of the implementation the Directive and what are the measures the problems are emended? The subject is viewed in national and international point of view, the national point of view is the Finnish Criminal Code and the International point of view is the EU Legislation and the Directive 2011/36/EU. The main concentration is a victim centered approach and the assistance system of the victims of the trafficking in human beings (THB) for sexual exploitation. The author studies the effectiveness of the current legislation concerning human trafficking and purchasing of sex and the reasons why very few victims are identified and access to the victims' assistance system.

In this thesis the author will study the realization of the sections of trafficking in human beings of Finnish Criminal Code and Act on the reception of international protection and the identification and assistance of victims of trafficking compared to EU legislation, the Directive 2011/36/EU on prevention and combating trafficking in human beings protecting its victims. With this research the author explains the main issues and the resolutions the author has become.

The author argues that the biggest problems are that the assistance system is interconnected to the criminal process and the revised Criminal Code have major challenges in interpretation and application in practice. These together constitute a problem in identifying victims and guiding the victims' assistance system.

Keywords

Assistance System, Criminal Code, Directive, Exploitation, Finland, Implementation, Prostitution, Recognition, Victim, Trafficking in Human Beings

INTRODUCTION

European Union (EU) is an entity which was originally established already in 1950s but is known as EU since 1st November 1993 when the Maastricht treaty became effective.¹ It is a Political and an Economical Union, consisting of 28 Member States of European countries.² The values of European Union are human dignity, freedom, democracy, equality, rule of law and human rights.³ The latest amendment to the constitutional basis of the EU was the Treaty on the Functioning of the European Union, also known and hereafter referred as Lisbon treaty which came in to force in 2009.⁴ European Union has fundamental freedoms such as free movement of goods, free movement capital, free movement of services, and free movement of labor.⁵

The free movement of persons is a fundamental right guaranteed by the EU to its citizens which offers a great possibility to work in other member state without visa and thus they are automatically legally residences e.g. in Finland.⁶ The individual must be able to move freely, to have full access to education, to decide the economic area into which he or she will act, not to be under the authority of the administrative authorizations.⁷ The Schengen Agreement was signed in 1985 in the village of Schengen, on the borders of Luxembourg, France and Germany.⁸ Nonetheless, the Schengen area also has enabled the free movement of organized crime such as human trafficking and the current refugee crisis has made the issue of trafficking even more relevant and raises significant challenges, including the blurring of the distinction between trafficking and smuggling, and

1 Paul Graig and Grainne De Burca. (2011). *Eu Law Texts, Cases and Materials, Fifth Edition, Oxford: University press*, 13

2 Schengen Visa info, European Union, Accessible: <https://www.schengenvisainfo.com/eu-countries/>, 20 April 2018

3 Eurlex, Promoting and safeguarding the EUs values, Accessible: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A133500>, 20 April 2018

4 Paul Graig and Grainne De Burca. (2011). *supra* note 1, 26

5 *Ibid.*, 582

6 *Ibid.*, 823

7 Cezar Tita, Dana Tita. (2010). Fundamental Human Rights in Europe Past and Present, *AGORA International Journal of Juridical Sciences*, 1-7, 1

8 Ursula Smartt. (2003). Human Trafficking: Simply a European Problem, *11 European Journal of Crime, Criminal Law and Criminal Justice*, 164-177, 164

increased risks of those fleeing violence becoming victims of traffickers and smugglers.⁹ The trafficking of persons within Europe has significantly increased in the past decade as European borders continue to fade.¹⁰ Under EU free movement law, EU citizens can arrive and reside for a period of up to three months in any other member state of the European Union, free from any immigration control or regulation. There is no requirement to obtain prior authorization from the immigration authorities of the member state or to obtain entry documentation, making entry into a state much easier.¹¹ Third countries nationals in particular who are victims of trafficking in human beings escape proper identification. TCN are often deported without a screening process that could identify them as victims.¹²

Trafficking in human beings is a serious crime and a gross violation of human rights. It affects the lives of countless people across the world.¹³ Human trafficking creates the victims who are the most vulnerable members of the society.¹⁴ They are purchased as slaves or traded for commodities and treated without human dignity within and over the borders. There are several forms of human trafficking e.g. trafficking for forced labor, forced marriage, child soldiers, human organ trade and for sexual exploitation, which is the most common form.¹⁵ The victims of human trafficking for sexual exploitation are mainly foreign women, while the perpetrators are mostly men, of both Finnish and foreign origin.¹⁶

This thesis argues about trafficking in human beings for sexual exploitations and forced prostitution in Finland and how the Directive 2011/36/EU on prevention and combating trafficking in human beings protecting its victims has implemented to Finnish national law, more specifically

9 Amandine Scherrer and Helmut Werner. (2016). Ex-Post Impact Assessment Unit, Trafficking in Human Beings from a Gender Perspective Directive 2011/36/EU European Implementation Assessment, 1-212, 11

10 Saadiya Chaudary. (2011). Trafficking in Europe: An Analysis of the Effectiveness of European Law, *Michigan Journal of International Law*, Volume 33 | Issue 1, 77-96, 78

11 Ibid. 80

12 Amandine Scherrer and Helmut Werner, (2016) supra note 9, 19

13 Trafficking in Human Beings, 2014, EEA Grants, 1-2, 1

14 Ibid.

15 Ibid.

16 Minna Viuhko. (2010). Human Trafficking for Sexual Exploitation and Organized Procuring in Finland, *European journal of Criminology*, European Institute for Crime Prevention and Control (HEUNI), Finland, 61-75, 61

to Finnish Criminal Code? The thesis is studying what are the main problems of the implementation the Directive and what are the measures the problems are emended? The subject is viewed in national and international point of view, the national point of view is the Finnish Criminal Code and the international point of view is the EU Legislation and the Directive 2011/36/EU. The main concentration is a victim centered approach and the assistance system of the victims of the trafficking in human beings for sexual exploitation. The author studies the effectiveness of the current legislation concerning human trafficking and purchasing of sex and the reasons why very few victims are identified and access to the victims' assistance system.

The author argues that the biggest problems are that the assistance system is interconnected to the criminal process and the revised Criminal Code have major challenges in interpretation and application in practice. These together constitute a problem in identifying victims and guiding the victims' assistance system.

In this thesis the author will study the realization of the sections of trafficking in human beings of Finnish Criminal Code and Act on the reception of international protection and the identification and assistance of victims of trafficking compared to EU legislation, the Directive 2011/36/EU on prevention and combating trafficking in human beings protecting its victims. With this research the author explains the main issues and the resolutions the author has become.

In order to find answers to this research the author will be using qualitative method of research which means of conducting a research of academic literature review, data-based research, interview, analysis of existing secondary data, including books, journals, legal articles, online sources and case law from years 2006-2017. The author has interviewed a specialist from the field of human trafficking and the analyzed legislation will be the EU law and domestic law of Finland. The current real time information was difficult to find because most of the research on the field of human trafficking takes a place few years back. The large part of my sources is based on articles, research and an interview of the Finnish Human Trafficking specialist Venla Roth.

1. THE OVERVIEW OF THE INTERNATIONAL AND EUROPEAN LEGAL FRAMEWORK OF HUMAN TRAFFICKING

Although the thesis focuses on the EU Directive, the Directive is not the only international treaty on Trafficking in Human Beings. Thereby the Member States, including Finland is obliged to comply with the agreements of the United Nations (UN) and the Council of Europe.

The Palermo Convention of the UN was adopted in 15th November 2000. The Convention entered into force on 29th September 2003. The Convention has 188 parties in 11th July 2017 and Finland is one of them.¹⁷ The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime (UNODC): The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children which the author is going to focus on this research.¹⁸ The Trafficking Protocol defines human trafficking using three basic elements: activity, means and purpose. The three key elements that must be present for a situation of trafficking in persons (adults) to exist are therefore: action (recruitment), means (threat), and purpose (exploitation).¹⁹ All these criteria have to be fulfilled in order for the offence to constitute human trafficking except in cases of child, under 18 years old.²⁰ The “means” element is not required in this case.²¹ The trafficking protocol is the most comprehensive international instrument offering a common conceptual understanding to combat human trafficking.²²

17 United Nations Convention against Transnational Organized Crime and the Protocols Thereto, Background Information, Accessible: <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>, 20 April 2018

18 Ibid.

19 United Nations. (2014). Human rights and Human Trafficking, Fact Sheet No. 36, 1-59, 3

20 Venla Roth. (2016). Implementation of Directive 2011/36/EU from a gender perspective in Finland, Trafficking in Human Beings from a Gender Perspective Directive 2011/36/EU European Implementation Assessment, 1-212, 93

21 Vähemmistövaltuutettu. (2010). Kansallinen ihmiskaupparaportoiija Kertomus 2010, Ihmiskauppa ja siihen liittyvät ilmiöt sekä ihmiskaupan uhrien oikeuksien toteutuminen Suomessa, Helsinki, 122

22 Idil Atak; James C. Simeon. (2014). Human Trafficking, *12 Journal of International Criminal Justice*, 1019-1032, 1021

On 3rd May 2005 the Committee of Ministers adopted the Council of Europe Convention on Action against Trafficking in Human Beings.²³ The Convention entered into force on 1st February 2008. The Convention is the first European treaty on this field, mainly focusing on the protection of victims of trafficking and it also aims to prevent trafficking and to prosecute traffickers.²⁴ The Convention is not restricted only for the Council of Europe member States, non-members States and the European Community also have the possibility of becoming Party to the Convention.²⁵ The traditional three P's: "Prevention, Protection and Prosecution" as formulated within CETS NO 197.²⁶ These three P's emphasizes the idea of victims' protection.²⁷ The Convention is based on recognition of the principle, already stated in Recommendation No R (2000) 11 of the Committee of Ministers on action against trafficking in human beings for the purpose of sexual exploitation adopted by the Committee of Ministers on 19 May 2000²⁸, that trafficking in human beings (1979) and the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949).²⁹

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims is replacing Council Framework Decision 2002/629/JHA.³⁰ It was seen as particularly weak in addressing the issue of assistance to victims.³¹ According to Article 22 Transposition, '*Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 April 2013.*'³²

23 Council of Europe. (2009). Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings, HDIM.IO.0195./09, France, 1-2 (1), Accessible: <http://www.osce.org/odihr/39001?download=true>, 20 April 2018

24 Ibid.

25 Ibid.

26 Jorn Johannes Marinus van Rij. (2014). Human Trafficking and Prostitution Policy - A European Issue, *Pecs J. Int'l & Eur*, 75-83, 80

27 Ibid.

28 Council of Europe. (2009). *supra* note 23, 1

29 Council of Europe. (2004). Recommendation No. R (2000) 11 of the Committee of Ministers and Explanatory Memorandum, Equality Division, Directorate General of Human Rights, France, 1-42 (5), Accessible: <https://rm.coe.int/1680092c2b>, 20 April 2018

30 Directive 2011/36/EU

31 Amandine Scherrer and Helmut Werner. (2016). *supra* note 9, 13

The crime control approach was criticized for approaching human trafficking as an issue of organized crime.³³ The Directive has a victim centered approach and a gender centered perspective to cover actions in different areas such as criminal law provisions, prosecution of offenders, victims' support and victims' rights in criminal proceedings, prevention and monitoring of the implementation.³⁴ Trafficked individuals are seen as victims of human rights abuses rather than criminals.³⁵

The aim of the 2011 Directive was to ensure a more coherent EU framework for tackling human trafficking and to address the existing loopholes in the international legal framework in that field in order to protect its victims in the MS.³⁶ The Directive adopted an 'integrated, holistic, and human rights approach to the fight against trafficking in human beings'. It also takes into account the gender dimension in trafficking in human beings, gender occupying a prominent place in the Directive.³⁷

European Union Law is divided into primary and secondary legislation. Primary legislation consists of Treaties and the secondary legislation consists of Regulations, Directives and Decisions.³⁸ A Directive is a legislative act that sets out a goal that all EU countries must achieve. Member states draft their own domestic laws and thus it is up to member states how they implement the Directive and receive the goals argues the author.

32 Directive 2011/36/EU, Art 22

33 Paul de Hert; Julia Muraszkiwicz. (2014). Gary Becker and the Economics of Trafficking in Human Beings, 5 *New J. Eur. Crim. L.*, 116-120, 118

34 European Commission, Together Against Trafficking in Human Beings, Directive 2011/36/EU, Accessible: https://ec.europa.eu/anti-trafficking/legislation-and-case-law-eu-legislation-criminal-law/directive-201136eu_en, 20 April 2018

35 Maria Eriksson. (2013). The Prevention of Human Trafficking - Regulating Domestic Criminal Legislation through the European Convention on Human Rights, *Nordic Journal of International law*, Vol. 82, 339-368, 340

36 Amandine Scherrer and Helmut Werner. (2016). *supra* note 9, 10

37 *Ibid.* 11

38 European Parliament, Fact Sheets on the European Union, EU Sources of law, Accessible: http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_1.2.1.html, 20 April 2018

2. THE FINNISH NATIONAL LAW

2.1. General Idea of Human Trafficking and Sex Trafficking

Trafficking in Human Beings is a serious crime and an insult against human rights and the human dignity and integrity of the individual. Human trafficking is about exploiting and controlling another human being against her will. Human trafficking has been characterized as modern-day slavery.³⁹ Human trafficking is the gross exploitation of another person. In human trafficking, the trafficker seeks to take the victim's power by controlling, manipulating and threatening this, so the victim can no longer protect herself from a disadvantageous situation. Physicists do not necessarily have to resort to physical violence in order to get their victims subjected to abusive use: subtle psychological pressure and constraint are enough to take the victim off.⁴⁰ Europol estimates that the human trafficking industry is now worth several billion Euros per year where THB is partly confined to the sex industry, partly encouraging other organized criminal activities such as drug trafficking and therein the funding of illegal arms trades aiding global terrorism.⁴¹

Victims of human trafficking are often associated with the idea of a passive individual who is incapable or in some way defective to make decisions and choices about their own lives.⁴² In human trafficking, victimization is often not so obvious as in so-called traditional crimes. Victims may only be seen as prostitutes, undocumented migrants, or even criminals e.g. procurers.⁴³ Most of the victims of THB identified in Finland have been temporarily resident aliens or persons who have been victims of THB already in another EU member state.⁴⁴ Frequently identified victims of trafficking have been allowed to reside in the country and work. Finland has already identified

39 Venla Roth. (2011). Näkymättömät uhrin: seksuaaliseen hyväksikäyttöön liittyvän ihmiskaupan tunnistaminen, Lakimies, 975–999, 975 translated by the author

40 Ibid.

41 Ursula Smartt. (2003). Human Trafficking: Simply a European Problem, 11 Eur. J. Crime Crim. L. & Crim Just, 164-177, 167

42 Minna Viuhko. (2013). Aktiivisia Toimijoita vai Passiivisia Ideaaliuherja? Ihmiskaupan uhrien rajoitettu toimijuus, Oikeus, 385-404, 389

43 Ibid.

44 Venla Roth. (2011). supra note 39, 976

several Finnish victims of THB who have been victims of sexual exploitation in Finland or abroad.⁴⁵ In Finland, the potential victims of THB are often referred to as victims or objects in the courts instead of the actual THB, often called "crime-related crimes"; aggravated punishment, disadvantaged labor discrimination, organized illicit immigration.⁴⁶ Individuals may be trafficked within their own country or across international borders.⁴⁷ Authors can be the relatives, acquaintances, or friends of the victim.⁴⁸

Finland is one of the North European countries, the land borders it shares with Norway, Sweden and Russia and the sea boarder with Estonia. Finland is a border state of the EU and the Schengen area. Owing to its geopolitical location, Finland has a position as both a transit country and a potential destination country for human trafficking and illegal immigration. Finland's proximity to Russia and Estonia, as well as its comparable affluence relative to its eastern and southern neighbors, also affects Finnish prostitution activity.⁴⁹

Countries from which trafficking victims often come from, have rather weak social security system, which fails to provide women with sufficient social security against unemployment, long-term sickness or single-parenting. Weak social security combined with a low level of equality between men and women seem to increase the vulnerability of women and girls to human trafficking.⁵⁰ Donna Hughes claims that "most 'sex workers' are or originally started out as trafficked women and girls." She then calls for "re-linking trafficking and prostitution and combating the commercial sex trade as a whole."⁵¹ Women and men usually end up victims of THB for different purposes.⁵²

45 Ibid.

46 Minna Viuhko. (2013). *supra* note 42, 389

47 World Health Organization. (2012). Understanding and addressing violence against women, 1-8, 1, Accessible: http://apps.who.int/iris/bitstream/handle/10665/77394/WHO_RHR_12.42_eng.pdf;jsessionid=DB1F8B24D7A74BAD5683DEF841073028?sequence=1, 20 April 2018

48 Sari Latomaa. (2014). Human Trafficking in Finland, *Intercultural Human Rights Law Review, Vol 9*, 229-270, 232

49 Minna Viuhko. (2010). *supra* note 16, 69

50 Venla Roth. (2016). *supra* note 20, 88

51 Ronald Weitzer. (2011). Sex Trafficking and the Sex Industry: The Need for Evidence-Based Theory and Legislation, *101 Journal of Criminal Law & Criminology*, 1337-1370, 1342

52 Directive 2011/36/EU (3) 1-11, 1

2.2. The History of Finnish Criminal Code Concerning Trafficking in Human Beings

Finland legal system is based on legislative model of Western Europe and also strongly influenced by the neighbor Nordic countries.⁵³ In 2006 Finland ratified the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, also known as Palermo Protocol.⁵⁴ In 2012 the Council of Europe Convention on Actions against Trafficking in Human Beings was ratified and the same year it came into force. The ratification of the United Nations Trafficking Protocol and the adoption of the EU framework decision on combating trafficking in human beings in 2002 prompted the Ministry of Justice to start the preparation of human trafficking provisions and other necessary statutory changes in Finland, so the combating of prostitution, procuring and human trafficking could be made more effective.⁵⁵ In addition to the provisions on human trafficking, the statutory definition of aggravated procuring was added to the Criminal Code, giving pre-trial investigation authorities a wide range of coercive powers when investigating procuring offences.⁵⁶ Furthermore, an act prohibiting the abuse of victims of prostitution entered into force in October 2006. The act does not prohibit all purchases of sex as it defines the victims of procuring and human trafficking as victims of the sex trade.⁵⁷ Thus purchasing sex is legal in Finland if the services are not bought from above mentioned individuals, the author states. The criminalization of human trafficking was added into the Finnish Criminal Code in 2004.⁵⁸ Before 2004, the Criminal Code did not have any legislation on trafficking in human beings under its own name.⁵⁹

53 Tapio Lappi-Seppälä. (2012). Criminology, crime and criminal justice in Finland, National Research Institute of Legal Policy, Finland, *European journal of Criminology*, 206-222, 206

54 Venla Roth. (2016). *supra* note 21, 94-95

55 *Ibid.*

56 *Ibid.*

57 *Ibid.*

58 ihmiskauppa.fi. (2017). Ihmiskaupan uhrien auttamisjärjestelmä, translated by the author, Accessible: http://www.ihmiskauppa.fi/haetko_tietoa/ihmiskauppa_rikoksena, 20 April 2018

59 Emmi Miesvirta ja Taneli Rantala. (2017). STADIN DAAMIT, Prostituutio 2010-luvun lopun Helsingissä, Poliisi Ammattikorkeakoulu, 31

In cases involving THB, however, most of the cases were deprivation of liberty, extreme deprivation of liberty and the abolition of human rights.⁶⁰ The chapter 25 3§ and 3a in the Criminal Code concerns trafficking in human beings.⁶¹ Before modifying the human trafficking statute into the Finnish Criminal Code, crimes now considered as human trafficking were prosecuted, inter alia, as work discrimination or prostitution.⁶² Procuring and aggravated procuring are criminalized in Chapter 20 3§ and 3 a § of the Finnish Criminal Code.⁶³

The current legislation on procuring has been in force since 1998 and aggravated procuring was criminalized in 2004 (*24.7.1998/563 and 9.7.2004/650*). Furthermore, in 2006 a new criminal offence was introduced in Chapter 20 8§, prohibiting the exploitation of a person who is a victim of the sex trade. In practice, this criminalization prohibits the purchasing of sexual services from victims of human trafficking and persons subjected to procuring (*25.8.2006/743*).⁶⁴ A significant feature of Finnish case law, which is relevant for victims of human trafficking, is the fact that victims of human trafficking are regarded as complainants in court, whereas procured women are treated as witnesses.⁶⁵ The human trafficking cases has increased after the amendments to the Criminal Code.⁶⁶ According to the Non-Discrimination Ombudsman the functioning of the assistance system of the victims of trafficking in human beings suffers from the lack of accurate legislation concerning human trafficking.⁶⁷ Here is referred to the overlapping of the chapter 25 section 3§ and 3a § trafficking in human beings and chapter 20 section 9 § and 9a § pandering in Finnish Criminal Code.⁶⁸

60 Ibid.

61 Finnish Criminal Code

62 Sari Latomaa. (2014). *supra* note 48, 247

63 Finnish Criminal Code

64 Minna Viuhko. (2010). *supra* note 16, 64

65 Ibid.

66 Sari Latomaa. (2014). *supra* note 48, 256

67 Non-Discrimination Ombudsman. (2014). *Kansallinen Ihmiskaupparaportoiija Kertomus*, 1-118, 39

68 Finnish Criminal Code

The relationship between the assistance system of the victims to other processes and legislation as social welfare and aliens act and is indistinct.⁶⁹ The consequence of inaccuracy of the processes and legislation is that the authorities has considerably discretion towards an individual customer and regarding her matter.⁷⁰ This does not raise trust towards authorities and the assistance system.⁷¹

At a governmental proposal in 2014 about amending the Criminal Code (HE 103/2014 vp) is stated that the partial overlap of the methods in pandering and human trafficking crimes has led to the delimitation of these crimes. For this reason, and also for reasons related to the criminal case, it has been suggested that potential crimes of THB might have been treated as pandering crimes in criminal proceedings instead of human trafficking crimes.⁷² The methods duplicate with pandering and THB insofar as trafficking concerns prostitution.⁷³ The police find pandering easier to verifiable the than human trafficking.⁷⁴ From the point of view of authorities, the key problem is finding a sufficient evidence of THB.⁷⁵

The Human Trafficking Reporter suggests in the 2010 report that in the case of THB for sexual exploitation, the provisions on THB at this stage do not require changes since they in principle allow for an interpretation in line with international and European obligations. On the other hand, according to the report, consideration should be given to whether changes to pandering should be required. When preparing for the changes, it should be ensured that the sections do not overlap with the provisions for human trafficking.⁷⁶ In the Governmental proposal is stated that it has even been considered that all pandering against people under the age of 18 should be considered as human trafficking crimes.⁷⁷

69 Non-Discrimination Ombudsman. (2014). supra note 67, 39

70 Ibid.

71 Ibid.

72 Hallituksen esitys Eduskunnalle laiksi rikoslain muuttamisesta ja eräksi siihen liittyviksi laeiksi. (2014). 1-68, 4

73 Ibid. 9

74 Ibid. 20

75 Ibid. 9

76 Ibid.

77 Ibid. 31

The revised Criminal Code came into force on 1 January 2015. Legislative amendments to the assistance of victims of trafficking began to apply from 1 July 2015. In that case, the name of the law in question also became a law on the reception of international protection and on the identification and assistance of victims of trafficking. Thus, the duties related to THB are directly revealed by the name of the law.⁷⁸

2.3. Directive 2011/36/EU and Finnish National Legislation

The Directive "establishes minimum rules at European Union (EU) level concerning the definition of criminal offences and sanctions in the area of trafficking in human beings" and it also "provides measures aimed at better prevention of this phenomenon, and at improving the protection of victims."⁷⁹ The Ministry of Justice in 2011 established a working group to identify needs for legislative changes. The purpose of the working group was to investigate how well Finnish legislation is in line with the Directive 2011/36/EU about combating human trafficking.⁸⁰ A satisfactory level of transposition of the Decision's requirements by the MS, this was insufficient to implement a comprehensive policy at EU level, in particular in the following areas: effectiveness of law enforcement activities aimed at detecting and prosecuting trafficking; victims protection and assistance; monitoring of trafficking trends and anti-trafficking policy.⁸¹

In general terms, the Directive needs to be fully implemented, consistently and diligently applied by all actors in the field: legislators, judges, prosecutors, police and public administrations. Proper training of all these actors is important, as are preventive awareness-raising campaigns and cooperation between public administration and the relevant parts of civil society.⁸² The Directive encourages Member States to take measures to establish as a criminal offence the use of services of trafficked persons. According to Article 18 (1) *Member States shall take appropriate measures,*

78 Sisäministeriö. (2016). Valtioneuvoston ihmiskaupan vastainen toimintaohjelma 2016–2017, 1-36, 9

79 Sari Latomaa. (2014). *supra* note 48, 259

80 *Ibid.* 260

81 Amandine Scherrer and Helmut Werner. (2016). *supra* note 9, 11

82 *Ibid.* 23

*such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.*⁸³

The EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims According to Article 11 (1) ‘*Assistance and support for victims of trafficking in human beings) (1) Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA*’⁸⁴ this part of the Directive is introduced in Finnish national law on the reception of international protection and the identification and assistance of victims of trafficking in Chapter 4 section 33§.⁸⁵ This has become one of the most challenging parts of the Directive to implement and interpret in Finnish domestic legislation argues the author.

The author argues that Finland have accomplished to implement the Directive 2011/36/EU in mainly matters, but either the Directive has end up being ineffective, the domestic legislation needs reform or the interpretation of the Directive in domestic legislation needs more practice from the authorities. The reasons for such perception are explained below in the section 3.

83 Directive 2011/36/EU Art 18

84 Ibid. Art 11

85 Act on the reception of international protection and the identification and assistance of victims of trafficking, Chapter 4 Section 33§

3. ANALYSIS OF THE CRIMINAL CODE RELATED TO TRAFFICKING IN HUMAN BEINGS

Before the amendment in Finnish Criminal Code in 2015, there has been an overlap in the legislation between pandering and human trafficking.⁸⁶ For prostitution, the two most important and most common criminal offenses are pandering and THB, including aggravated offenses. Both criminal titles have their own special features, although it may be difficult to distinguish between them.⁸⁷ If a person is pressured, threatened, or anyhow subjected to prostitution, the criteria of human trafficking are fulfilled. However, the two statutes have inconsistencies.⁸⁸ In Finnish legislation, pandering can involve pressuring, threatening and even violence.⁸⁹ Many of the human trafficking cases are not convicted as human trafficking, instead they are convicted as pandering which gives much lower sentences the author argues. The failure to screen prostitution cases for evidence of trafficking results not only in the unjust prosecution of victims but also in missed opportunities to prosecute their traffickers.⁹⁰

Under Finnish national law the definition of human trafficking is thus problematic.⁹¹ The overlap of the legislation causes contradictions between different authorities processing the same case.⁹² The police, prosecution and the court might have a different opinion what is considered as human trafficking and by investigating under a more serious clause becomes an issue when the court does not see the connection of human trafficking and the right conviction does not take into account the seriousness of the crime.⁹³ As follows many victims are left without help and the destruction of

86 Sari Latomaa. (2014). supra note 48, 240

87 Emmi Miesvirta ja Taneli Rantala. (2017). supra note 59, 14

88 Sari Latomaa. (2014). supra note 48, 240

89 Ibid.

90 Michelle Madden Dempsey. (2015). Decriminalizing Victims of Sex Trafficking, *52 American Criminal Law Review*, 207-225, 213

91 Sari Latomaa. (2014). supra note 48, 240-241

92 Ibid. 241

93 Ibid.

human trafficking is not achieved.⁹⁴ In the Government Proposal of amending the criminal code is alleged that the possible overlapping can still occur when there is a case of human trafficking which is containing prostitution features. The overlapping in legislation concerning human trafficking and prostitution crimes, the unclear legislation has caused possible mistakes in the judgement process and the human trafficking cases might have convicted as a pandering crime.⁹⁵

The author argues that in the ground level authorities such as police are not aware enough about the legal system of THB, thus the rights of the victims are not realized. The authorities in the assistance system does not have enough rights to accomplish the rights of the victims and if the legislation does not state the possible victim as victim of human trafficking hence the authorities in the pre-trial investigation should be able to recognize the possible victims. Many human trafficking cases are convicted as related crimes in court, e.g. pandering and this affects to the position of the victim and without the correct status the victims of trafficking, they will not access to the system and get the residence permit hence the traffickers are convicted from related crimes and the sentences are low. As a result, the victims will not receive any compensation and secure.

The difference between handling the case as pandering compared to human trafficking is tremendous for the victim. The main difference between human trafficking and pandering cases is that in human trafficking the victims are heard and treated as the injured parties. In pandering cases, victims are treated merely as witnesses; they do not get the assistance they need and the victims illegally in the country are most likely deported.⁹⁶ Simplistically put pandering will focus more on prostitution, practiced criminalizing third-party business, while in THB is focused on the victim and how she has suffered.⁹⁷

Finland has ratified most of the international conventions and agreements regarding human trafficking. Laws have been changed and different kinds of support systems established for human trafficking victims. On paper, the legal system and the support mechanism is effective, and

94 Ibid.

95 Hallituksen esitys. (2014). supra note 72, 4

96 Sari Latomaa. (2014). supra note 48, 241

97 Emmi Miesvirta ja Taneli Rantala. (2017). supra note 59, 15

everything seems to be fine. So why is this not working in practice?⁹⁸ The criminal justice system seems to be unequipped to deal with the dynamics of exploitation and the psychological means of committing an offence of human trafficking.⁹⁹

Venla Roth argues that it is difficult to make very far-reaching conclusions as the Criminal Code amendment in 2015 helped to condemn traffickers and clarified legislation in the area of THB thus there has not been crimes which are made after the year 2015, three years is a very short time and because the number of cases is so low. When she has been talking to police about the reformed criminal code, she has the impression that in the police is not understood the change or even the fact that the reform has made at all. There is a need for education in police and prosecutors, the reformation is not well understood and the key point in the legislative change is not known yet by the authorities and its significance is not fully understood.¹⁰⁰

Changes in the identification of THB have been sought to improve. For example, no deprivation of liberty is required for human trafficking.¹⁰¹ There have been a lot of misinterpretations and these wanted to be changed. The concept of 'deprivation of liberty' should be changed and to underline the concept to take control over someone, the main point was on the use of psychic means, and then when the dependent position and the unsafe state of the victim. There is no longer need for a underline narrow interpretation, Roth interprets as it is being removed.¹⁰² Roth states that she believes that these are not fully understood yet, in these situations she returns to the Supreme Court's 2015 judgement (model office), which states that ‘‘what is trafficking in human beings’’ when the district court and the court of appeal gives the judgement of trafficking in human beings but the supreme court states that it is not human trafficking. If reformed Criminal Code would had been in force, this would have been probably convicted as trafficking in human beings. The change is very significant, states Roth.¹⁰³

98 Sari Latomaa. (2014). *supra* note 48, 238

99 Venla Roth. (2016). *supra* note 20, 86

100 Vähemmistövaltuutettu Venla Roth. (2018). Author's Interview, Notes of the interview. 9.2.2018, venla.roth@oikeus.fi, +358 (0)295 666 807

101 *Ibid.*

102 *Ibid.*

103 *Ibid.*

Roth argues the criminal process and the victims' assistance are interconnected.¹⁰⁴ The help and the criminal process cannot tie together. The assistance available for the victims is often conditional and depends on the result of the criminal proceedings. In Finland, it is the criminal proceedings that determine whether the victim will receive assistance or not and how long. Because of this strong link between assistance and criminal proceedings very few victims of human trafficking seek assistance from the Finnish authorities.¹⁰⁵ That it is understandable from the point of view of the state, it has the desire to bring the criminals to the responsibility and prevent the THB, but it should not be the principle of any system. If police want to know the crimes, have to understand that these are crimes against human beings and the people are the priority and need the primary help. The offender will not be found if the victims are not taught first. Roth notes that is not really understood the sacrificial dynamics and what it is really about. Is not understood the influence these people live under and the situation of the victims is not made easier by the fact that they are given more conditions that they have to fill in order to get help and get out of the exploitation circuit.¹⁰⁶

According to the Directive 2011/36/EU article 11 (2) *“Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have reasonable grounds for suspecting that he may have been subjected to any of the offenses referred to in Articles 2 or 3”*.¹⁰⁷ The author argues that the assistance system of protection and aid should accept the victims to the system although the authorities cannot be sure if they are victims of human trafficking or related crimes and first of all not to force cooperation with the authorities, no one should be turned away in any reason. This part of the Directive Finland is not following according to instructions. The national legislation is ineffective and the battle against human trafficking has not produced the wanted result.

The criminal law-based definition of human trafficking and its application and interpretation in the criminal proceedings seem to have a great impact on who are considered to have a right to

104 Ibid.

105 Ibid.

106 Ibid.

107 Directive 2011/36/EU Art 11

receive assistance and protection under the national law.¹⁰⁸ In the assistance system indicate that, even for a person accepted into the system, assistance is often terminated when a criminal investigation stalls, an offence other than human trafficking is selected in the investigation, or no conviction is achieved for a human trafficking offence in the matter.¹⁰⁹ The low number of identified trafficking victims and cases may give authorities and politicians the impression that human trafficking is a marginal phenomenon, which does not deserve attention.¹¹⁰

The Author argues, the more aware the authorities are about the current legislation and the system concerning human trafficking the higher possibility is to achieve the goal of anti-trafficking action. To learn the complexity of THB is required that the authorities are educated to proceed specific cases such as human trafficking so there would not be confusion with related crimes such as pandering. THB as such is not a new issue on the international legal agenda. There have been international efforts to combat slave trade and slavery since the 19th century.¹¹¹ The author states that human trafficking has been 14 years under the Finnish criminal Code.

The author agrees with the claim that the current domestic legislation concerning THB is not liable until the significance of the changes in the reformed Criminal Code are fully understood by the authorities and they are able to interpret the legislation correctly. There is a strong link between low number of identified victims, investigations and prosecutions. The assistance and the criminal proceedings, the criminal process and the victims' assistance are interconnected, the victims will be forced out of the assistance system if the criminal proceeding does not proceed or if the offense is being investigated as another offense or commenced as human trafficking, but the judgment comes some other as pandering. Hence the victims are in a manner to demand go through the emotionally anguished criminal process.

The assistance available for the victims is often conditional and depends on the result of the criminal proceedings. The victims of THB have no trust towards the authorities hence the assistance system cannot promise anything to them. Why would victims want to predispose

108 Venla Roth. (2016). *supra* note 20, 97

109 *Ibid.*

110 *Ibid.* 89

111 *Ibid.* 92

themselves to possible threat if there is no guarantee that the assistance system is profitable? If the victims fall out of the system they might end up back to the exploitation circle or in the worst case, they might get killed or their families can expose to danger. This must have an effect to the fact that the victims do not want to get to the assistance system. The system has a good purpose, but the practical realization is something else states the author. The system should have a victim centered approach and the authorities shall not use the victims as a ‘bait’ to convict the criminals.

The author argues that the authorities might be afraid the misuse of the system, but the suspicions should not lead the situation to this. The authorities should have more victim centered approach and prioritize the victims first and secondly the criminal process. There will not be a crime or a criminal without the victim. The system does not serve the victims since the whole concept of human trafficking is not well-known among the authorities. The authors opinion is to continue training of THB and be provided for authorities, prosecutors and judges. Concerning crimes which are related to THB, should be authorities such as police officers, crime investigators, prosecutors and judges whom are specialized in this specific field. Hence the convictions in human trafficking cases would increase, argues the author. Some kind of help should also be provided to these victims whose crime is not proceeding or the crime is not convicted of human trafficking. The victims’ remains unidentified due to inadequate legislation and incorrect application and interpretation thus these victims should also be offered assistance because THB has been found to be challenging for the identification of victims.

3.1. Analyzing legal prostitution in Finland and its problems in relation to Trafficking in Human Beings

Finland introduced a partial ban on purchasing sex in 2006.¹¹² Prostitution itself is not illegal in Finland and is not punishable by Criminal Code, however, it is governed by the Criminal Code, the Order Act and the Aliens Act. The Criminal Code prohibits pandering, THB and the purchase of sexual services from the victim of THB or a victim of pandering. Purchasing sexual services from a young person under the age of 18 is also forbidden. The Order Act, on the other hand,

112 May-Len Skilbrei and Charlotta Holmström. (2011). Is There a Nordic Prostitution Regime?, *Crime and Justice*, Vol. 40, No. 1, 479-518, 480

prohibits the purchase of sexual services and the provision of a fee in the public place.¹¹³ The formation of criminalized prostitution is client centered such as the client is the responsible of buying the services instead of the seller.¹¹⁴

In Governments Proposal is stated that prostitution might relate criminal activities especially human trafficking and pandering criminality.¹¹⁵ In Sweden, Norway and Iceland is in force the full ban on the purchase of sex.¹¹⁶ It has been discussed also in Finland. A total ban is justified by the fact that it would reduce THB and pandering, demand for paid sex, and harassment of young women and girls on the street and on the internet.¹¹⁷ Many countries around the world prohibit both the buying and selling of sexual services.¹¹⁸ The distinction between free and forced prostitution is seen as a distraction only. Prostitution can never result from free will but is always a result of a lack of other forms of livelihood for women.¹¹⁹ Evidence has emerged globally indicating that legalized prostitution may increase human trafficking.¹²⁰ Legalized or decriminalized prostitution industries are one of the root causes of sex trafficking.¹²¹

The Ministry of Justice has debated whether Finland should follow the methods practiced in Sweden, it has completely criminalized buying sex.¹²² Currently Finnish legislation prohibits prostitution in a public place and buying sex from minors or from victims of human trafficking.¹²³

113 Criminal Code, Order Act, Aliens Act

114 Hallituksen esitys. (2014). supra note 72, 8

115 Ibid.

116 May-Len Skilbrei and Charlotta Holmström. (2011). supra note 112, 479

117 Ibid. 480

118 Ibid.

119 Martti Lehti, Kauko Aromaa. (2006). Trafficking for Sexual Exploitation, 34 *Journal of Criminal Justice*, 133-220, 135-136

120 Lara Gerassi. (2015). A Heated Debate: Theoretical Perspectives of Sexual Exploitation and Sex Work, 42 *The Journal of Sociology & Social Welfare*, 79-100, 88

121 Janice G. Raymond. (2003). Ten Reasons for Not Legalizing Prostitution and a Legal Response to the Demand for Prostitution, PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS, 315-331, 317

122 Sari Latomaa. (2014). supra note 48, 261

123 Ibid.

Needless to say, the legislation is ineffective in practice, since such cases are almost impossible to prosecute.¹²⁴ The prosecution should be able to prove that the person buying sexual services knew at the time that the person was underage or a victim of human trafficking.¹²⁵ Complete prohibition of buying sexual services would clarify the legislation and, it is hoped, create a negative public atmosphere towards commercial sex.¹²⁶

The author argues that criminalizing purchasing of sex results in a decrease in trafficking and criminalization of purchasing sex makes the victims of human trafficking and pandering more vulnerable and increase the risk to further violence and exploitation.

The Parliamentary Assembly of the Council of Europe and the European Parliament have recently recommended a ban of sex selling as an important prostitution policy measure.¹²⁷ These both international representative actors see the ban of purchasing sex as an effective and necessary way of addressing the demand for human trafficking and as a means of reducing and preventing THB and other crimes related.¹²⁸ According to the national human trafficking rapporteur, Finland should seriously consider extending the current system on a partial sex purchasing to a system of ban sex purchasing completely.¹²⁹ These rapporteurs are tasked with monitoring the extent of human trafficking and the effects of international and national anti-trafficking policies in their countries, and they are required to publish annual reports.¹³⁰ According to Article 19 of Directive 2011/36/EU “*Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organizations active in this field, and reporting*”.¹³¹ Finland has fulfilled these requirements of the Directive states the author.

124 Ibid.

125 Ibid.

126 Ibid.

127 Non-Discrimination Ombudsman. (2014). *supra* note 67, 94

128 Ibid. 94-95

129 Ibid. 95

130 Serena Bressan. (2012). Criminal Law against Human Trafficking withing the EU: A Comparison of an Approximated Legislation, *20 European Journal of Crime, Criminal Law and Criminal Justice*, 137-163, 161

There are two sides, abolitionists, who support the criminalization of purchasers of sex and libertarians, who support the legalization of prostitution.¹³² Abolitionists are of the view that all prostitution is violence and slavery that is not in accordance with human dignity.¹³³ According to the libertarians, prostitution may also be on a voluntary basis and be carried out as sex work.¹³⁴ In this view, a distinction must be made between these two concepts on the one hand and forced prostitution and human trafficking on the other.¹³⁵ Libertarians are of the view that legalizing prostitution and recognizing it as a form of employment would protect prostitutes against violence and exploitation.¹³⁶

Although the section 3§ and 3 a§ in chapter 25 of Finnish Criminal Code prohibits the purchasing of sex from the victims of human trafficking, it seems, however, that the criminalization has not worked as intended argues Roth.¹³⁷ A partial ban on buying sex is not well suited to human trafficking situations, being insufficient for preventing or curbing human trafficking for the purpose of sexual exploitation or for protecting victims of the sex trade effectively.¹³⁸ As a consequence, Finland has amended the provision so that the exploitation of a victim of sex trade is a punishable offence even if committed through negligence.¹³⁹

The purpose of the proposal is to improve the protection of victims of prostitution in criminal proceedings and to reduce the demand for paid sex.¹⁴⁰ THB for sexual exploitation is a gender-specific phenomenon: the reasons why women and girls are trafficked, the impacts that sexual exploitation have on the victims, and the explanations why counter trafficking efforts have largely

131 Directive 2011/36/EU, Art 19

132 Amandine Scherrer and Helmut Werner. (2016). supra note 9, 8

133 Venla Roth. (2016). supra note 20, 98

134 Ibid.

135 Ibid.

136 Ibid.

137 Venla Roth. (2018). supra note 100

138 Venla Roth. (2016). supra note 20, 107

139 Ibid. 98

140 Ibid. 107

been ineffective as of today are also gendered.¹⁴¹ In countries where women are criminalized for prostitution activities, it is crucial to advocate for the decriminalization of the women in prostitution.¹⁴² No woman should be punished for her own exploitation.¹⁴³ Any Member State should never decriminalize pimps, buyers, procurers, brothels, or other sex establishments.¹⁴⁴ Legalization or decriminalization of prostitution does not control the sex industry: it expands it.¹⁴⁵ Although selling and buying sex is legal in Finland, prostitution is problematic. It brings a lot pernicious crime, such as pandering, THB, drug trafficking and violence.¹⁴⁶ It is strange that in Finland, sex selling is not permitted except in the public domain, but a prostitute without penalties can only register a Finnish citizen.¹⁴⁷ According to Aliens Act Chapter 9 Section 148§ (6) *she may reasonably suspect that she is selling sexual services, the person who is not a Finnish citizen cannot sell sexual services, otherwise she will be banished.*¹⁴⁸

The author argues that foreign prostitutes may be victims of THB, but they might be seen only as prostitutes, thus they can be banished instead of treated as victims of human trafficking should be treated such as offered assistance and aid. This may affect the fact that victims of human trafficking for sexual exploitation is difficult to recognize and the victims do not find the way to the assistance system since the system is uncertain and it cannot promise anything about the victim's future. In the authors opinion this affects to the victims will to seek the assistance which affects to the difficulty and the number of the identified victims. The author argues that many prostitutes who might be the victims of human trafficking do not want to report the police because if they are not recognized as victims of THB they may be treated as foreign prostitutes who has no permission to sell sexual services by law and get banished. The law concerning the foreign prostitutes and expulsion should be revised and the equal rights for all prostitutes in Finland, this could facilitate the recognition of the victims of human trafficking for sexual exploitation.

141 Ibid. 102

142 Janice G. Raymond. (2003). supra note 121, 316

143 Ibid.

144 Ibid.

145 Ibid. 318

146 Emmi Miesvirta ja Taneli Rantala. (2017). supra note 59, 3

147 Ibid. 41

148 Aliens Act, Chapter 9, Section 148§ (6)

The suggestion to broaden the clause on prohibiting buying sex from victims of human trafficking, to also include situations where the buyer should have known to suspect human trafficking would probably not have much effect, either. Proving that the buyer should have known he was dealing with a victim of human trafficking is almost as problematic as proving he in fact knew that was the case. One alternative would be to go a little further and make buying sex from a victim of human trafficking punishable in all cases, whether or not the buyer was fully aware that he in fact was dealing with human trafficking.¹⁴⁹ Criminalizing purchasing of sex is believed to reduce prostitution and human trafficking and organized crime related to prostitution.¹⁵⁰ According to international research human trafficking for sexual exploitation and the demand of sexual services is seen to be a connection, although the connection is not as linear as often is assumed. The researches have shown that the quantity of prostitutes and the size of the sex market might increase human trafficking for sexual exploitation.¹⁵¹

Roth argues that any law or punishable act does not affect itself the purchase of sex, but she definitely believes that the criminalization of purchasing sex is the right course of prostitution.¹⁵² One single law as a decisive factor but she thinks there is much more to be said about how prostitution is seen in society and how society supports it or exercising prostitution or pursuing other prostitution, i.e. pandering and how it defines it in relation to, for example, violence against women or gender equality issues, promoting equality between women, the absolutely essential thing is how we see women or how women are being targeted and how sex is seen as a commodity or a woman is a commodity.¹⁵³

Prostitution is not only individual discrimination, exploitation or abuse by an individual man, but also a structure reflecting and maintaining inequality between men and women.¹⁵⁴ Rather, this is an equality debate than a criminal justice debate. Roth sees that it is absolutely necessary to go in

149 Sari Latomaa. (2014). *supra* note 48, 264

150 Johanna Kantola, Kevät Nousiainen ja Milja Saari. (2012). *Tasa-Arvo toisin nähtynä, oikeuden ja politiikan näkökulmia tasa-arvoon ja yhdenvertaisuuteen*, Gaudeamus, Helsinki, 2

151 *Ibid.* 247

152 Venla Roth. (2018). *supra* note 100

153 *Ibid.*

154 Diane Post. (2011). Legalization of Prostitution is A Violation of Human Rights, *68 National Lawyers Guild Review*, 65-108, 66

to the direction that sex purchasing is a punitive action. She believes that it has a normative impact on human behavior and thus reduces the demand for commercial sex.¹⁵⁵ There is a research evidence from Sweden and Norway that it has a normative effect as the legislation is intended, the task is to create behavioral norms for humans and instructions on what is desirable and what is not desirable and in that sense Roth thinks it is the correct direction.¹⁵⁶

The author argues that is slightly possible that human trafficking is not seen as a serious issue thus it does not show its appearance easily. It is very encrypted form of crime and thus needs more effective actions to suppress, as an example, some forms of human trafficking is seen acceptable as ethnic massage parlors and mail order brides. They are not seen as victims of THB. Should be considered the new amendment of the Finnish national legislation. Either prostitution should be totally criminalized or purchasing of sex from a victim of human trafficking or pandering should be criminalized in any case such as the client cannot rely on ignorance. The sentences in Finland that are given in the cases of human trafficking or pandering are mainly low compared to the seriousness of the crime specially if the judgements in human trafficking cases are handled as pandering.

The author agrees with the claim that abolitionist prostitution policy is the right direction, thus it has rather decreasing effect to THB in sexual exploitation than the current form. It has a normative impact on human behavior as Roth stated. The authors own opinion supports criminalizing purchasing of sex in Finland as legalized prostitution has proved to have an increasing impact in THB for sexual exploitation. The current legislation appears to be ineffective argues the author thus the law only prohibits buying sexual services from a minor, a victim of human trafficking or pandering which means that if the victims of THB are not recognized the law does not protect the victims of sexual exploitation properly. The buyers may claim that they were not aware that the prostitutes are victims of human trafficking and then they cannot be prosecuted. If purchasing of sex was totally criminalized the number of the victims of human trafficking for sexual exploitation would decrease while the convictions of the criminals would increase which eventually would affects to the quantity of the sex market.

155 Venla Roth. (2018). *supra* note 100

156 *Ibid.*

The author argues that the clients are often reluctant to report victims, the level of 'awareness' is not easy to establish, and cases of trafficking are hard to prove. In Finland the responsibility of purchasing sex is on buyer's shoulders. If the service is bought from a victim of human trafficking, pandering or a child, the act is punishable, but the issue arises in the recognition of the victims, the buyer may not know that the prostitute represents a victim thus the act will not be punished. Although the buyer would know that he is buying serviced from a victim he can deny it and claim to be innocent. The buyers of sexual services are in key position of recognition the victims of human trafficking and pandering thus it is rare that they would report the police by being afraid to their own identity to expose and getting in to responsible of their actions.

In the authors opinion the full criminalization of purchasing of sex is the correct direction and way to decrease the THB for sexual exploitation, the full ban would ease to convict the buyers in any case and this way the human trafficking cases would end up to prosecution and the buyers has to take the full responsibility of their actions either they have bought services from a victim or not. This would affect the quantity of the sex market which would decrease the human trafficking for sexual exploitation.

3.2. Analyzing the Recognition of the Victims of Trafficking in Human Beings

From July 2015, Finnish legislation has introduced provisions for the official identification of victims of human trafficking.¹⁵⁷ The Act on the reception of international protection and the identification and assistance of victims of human trafficking, Chapter 4 section 38§ is called the actual identification of the victim of human trafficking.¹⁵⁸ The purpose of official identification is to strengthen the status and rights of victims of human trafficking.¹⁵⁹ The difficulties to tackle human trafficking for the purpose of sexual exploitation can be explained by the legal history: women in prostitution and other fields of commercial sex have always been considered to be threats to society.¹⁶⁰

157 Act on the reception of international protection and the identification and assistance of the victims of trafficking in human beings

158 Ibid.

159 Ibid.

160 Venla Roth. (2016). *supra* note 20, 87

The recognition of the victims of THB can be accomplished by three sectors; recognition in a criminal process, recognition by the Finnish Immigration Service or recognition by the victims' assistance system.¹⁶¹ The Preliminary Authority or the Public Prosecutor will identify a victim of THB when initiating a pre-trial investigation into a human trafficking violation that the victim may identify.¹⁶² Likewise, the court recognizes the victim as having been victimized of THB.¹⁶³ A victim identified through a criminal process can apply for a residence permit for a victim of THB from the Finnish Immigration Service.¹⁶⁴

The Finnish Immigration Service recognizes the victim of trafficking in human beings by granting her a residence permit under the 52 a § 2 subsection of the Aliens Act granting a permanent residence permit.¹⁶⁵ Such a permit may normally be granted to a victim of THB who are considered to be in a particularly vulnerable position, and the need for permission to cooperate with pre-investigative authorities to investigate the offense.¹⁶⁶

The assistance system can recognize a person taken into account as a victim of THB in two different situations.¹⁶⁷ Before the recognition decision, the assistance system will consult a multidisciplinary expert group.¹⁶⁸ The recognized victims of THB has the right to receive services, support and aid.¹⁶⁹ Government sources and NGOs estimates of human trafficking vary between half a million and four million victims of human trafficking every year.¹⁷⁰ In Europe, the number of victims is estimated to increase to hundreds of thousands per year.¹⁷¹ However, victims of THB

161 Ihmiskauppa.fi. (2017). supra note 58, 13-14

162 Ibid.

163 Ibid.

164 Ibid. 13

165 Ibid.

166 Ibid. 13-14

167 Ibid.

168 Ibid. 14

169 Ibid.

170 Venla Roth. (2011). supra note 39, 976

171 Ibid.

are significantly less identified.¹⁷² Criminal cases relating to THB are also rarely dealt with in the courts.¹⁷³

Finland is estimated annually to be a passage country and a destination country of hundreds of victims of human trafficking, but only around hundred victims have only identified so far and only a total of five cases have been dealt with in the courts by 2011.¹⁷⁴ This raises the question of whether the number of victims is being estimated incorrectly or whether the THB cannot be identified.¹⁷⁵ Both explanation models are possible.¹⁷⁶ However, international experiences show that action against THB is most effective where legislation and official practices support the identification and assistance of victims of THB e.g. the Netherlands, Belgium and Italy.¹⁷⁷ Human trafficking is a gender split phenomenon, girls and women end up the victims of THB more often than men and boys.¹⁷⁸ In Europe, the sexual exploitation of women and girls is considered to be the most common form of THB, but human trafficking in prostitution and sexual exploitation has, however, been clearly identified much less than trafficking in labor exploitations.¹⁷⁹

European Union Judicial Cooperation Unit in its comprehensive review, Eurojust has found that criminal activity involving the characteristics of THB is often investigated as another crime than human trafficking in several other Member States of the European Union.¹⁸⁰ One of the main reasons for this is the complexity of the definition of THB and the fact that key actors in the criminal justice system do not have a clear idea of what human trafficking really means and where

172 Ibid.

173 Ibid.

174 Ibid.

175 Ibid.

176 Ibid.

177 Ibid.

178 Ibid.

179 Ibid. 976-977

180 Ibid. 987-988

cross-border crime is involved, such as pandering.¹⁸¹ Especially the characteristics of the victim's dependent and vulnerability are difficult to apply.¹⁸²

Also in Finland, the legal definition of human trafficking and the separation of human trafficking from e.g. pandering has proved to be more difficult than anticipated.¹⁸³ Recognition of the victims of THB is crucial not only for crime prevention but also for the realization of victims' rights.¹⁸⁴ If victims of trafficking are not identified, their legitimate rights to help and protect cannot be realized.¹⁸⁵ Unidentified victims of THB may not necessarily be guided by the assistance system for the victims of human trafficking or will have access to any other rights, such as the possibility of applying for a residence permit on the grounds of the victims of trafficking.¹⁸⁶ Unrecognizability may lead to the victim's removal from the country, the continuation of exploitation and the re-victimization.¹⁸⁷ Improvement should be made in the assistance system.¹⁸⁸

The biggest problem with human trafficking in Finland is the difficulty of identifying possible victims. Only a few human trafficking cases are reported yearly, while most victims remain unidentified and fall out of the support system. Recognizing possible victims is essential and has to be more effective.¹⁸⁹ Currently, authorities and ground level workers do not have enough knowledge and resources to identify possible victims. Especially in sex-related trafficking, the victims are difficult to detect and a negative attitude towards prostitutes increases the chances of possible victims falling out of the support system.¹⁹⁰ The main players of the criminal justice

181 Ibid. 988

182 Ibid.

183 Ibid.

184 Ibid. 991

185 Ibid.

186 Ibid.

187 Ibid.

188 Ibid. 992

189 Sari Latomaa. (2014). *supra* note 48, 238

190 Ibid. 238-239

system do not have a clear idea of what THB actually means and what the differences between human trafficking and offences associated with it such as procuring are.¹⁹¹

The author argues that the victims are hard to identify because they rarely are brave enough to approach the authorities for the reason they are afraid of the authorities itself or to get hurt or about to lose their families by the organization. They rather accept the situation as it is or in some cases the victims may not even realize being the victims of human trafficking, and thus they fall out of the support system argues the author. The non-identification in the criminal proceedings clearly has an impact on the assistance system: the number of victims of human trafficking objected to sexual exploitation in Finland who are referred to the assistance system has remained low. In the worst case the potential victims of human trafficking are removed from the country without being offered any assistance at all.

Roth recommends training for the authorities because they are ignorant of the reforms. The system has structural defects and fears that the system is being exploited has become an overly control system that the police should know about all the victims. Finns and other victims are not guided to the help system, only asylum seekers are diverted because they are known to the police. The police want to know about all the victims and it does not fit the victim's dope, Roth understands it quite well, the legislative change 2015 has led to this situation.¹⁹²

All cases, when sex workers are not conducting business with their full consent, and cannot truly, freely stop working whenever they want should be prosecuted as human trafficking. Similarly, only those cases when the workers truly have a chance of leaving whenever they want without being pressured financially or in any other way, and they are conducting in prostitution out of their free will, could be prosecuted as pandering.¹⁹³ The complete prohibition of buying sexual services has been debated. Criminalizing buying sex might help in managing demand for commercial sex and therefore demand for sex trafficking. Complete prohibition, however, has its issues, and so far the proof of its effectiveness has been scarce.¹⁹⁴

191 Venla Roth. (2016). *supra* note 20, 96

192 Venla Roth. (2018). *supra* note 100

193 Sari Latomaa. (2014). *supra* note 48, 263

194 *Ibid.* 264

One of the most important reasons for the low number of identified trafficking victims, investigations and prosecutions is the strong link between assistance and criminal proceedings, the criminal process and the victims aid are interconnected, the victims will be forced out of the help system if the criminal proceeding does not proceed or if the offense is being investigated as another offense or commenced as human trafficking, but the judgment comes some other as pandering hence the victims are in a manner to demand go through the emotionally anguished criminal process. The assistance available for the victims is often conditional and depends on the result of the criminal proceedings. In Finland, it is the criminal proceedings that determine whether the victim will receive assistance or not and how long. Because of this strong link between assistance and criminal proceedings very few victims of human trafficking seek assistance from the Finnish authorities. The Police does not understand the significance of the change of the revised Criminal Code in 2015 or even the fact it is done at all, there is a need for education in police and prosecutors, stated Roth.¹⁹⁵

The author argues that as long as the criminal process is interconnected with the victims' recognition to this extent and the ground authorities are not aware enough of the functioning of the legislation the recognition of the victims is not going to improve. The reforms in law takes time to settle into the legislation. The victims will reach the assistance system if it becomes more reliable for the victims' point of view, they will automatically fall out of the system if the authorities have no evidence of crime and thus are not even willing to expose themselves to uncertain and dangerous process which cannot guarantee anything and the result in the end may be a loss or threat of them self or their family. In the authors opinion, everyone should be justified to receive assistance and the most important is the victim centered approach and currently system is too narrow-minded referring to the relation with the prosecution of criminal proceedings.

The author argues that everything is depending of the proceeding of the criminal process it is at least a questionable and an absurd way to proceed a case which is insulting human dignity and human rights on this level. The victim is depending of the result of the proceeding and the author would call it as lottery. If the case does not proceed in to court or the conviction comes something else than human trafficking, the victim is worthless for the authorities, this is how the author interprets this current situation. The correct approach should be to help the victim get rid of the

195 Venla Roth. (2018). *supra* note 100

exploiters and organize the assistance and legal aid she needs. The victims are seen worthy when they are needed as witnesses in court but otherwise their rights are not realized. The author thinks that there may be different attitude between the domestic and the other victims, this is only the authors thought but the current migrant crisis in Europe might have affect the general attitude of people from foreign origin.

3.3. Analyzing the Assistance System for Victims of Human Trafficking

The Assistance System of Victims of Trafficking in Human Beings is introduced in the Finnish legislation, Act on the reception of international protection and the identification and assistance of the victims of THB in Chapter 4 Section 33§.¹⁹⁶ Coordination, maintenance and development of the system of assistance for victims of human trafficking is the responsibility of the Joutseno Reception Centre, maintained by the state. Various operators, authorities, and civic organizations co-operate in Finland on a continuous basis to stop human trafficking. Victims of human trafficking are entitled to help and protection. The rights of the client of the assistance system include the legal aid and legal advice provided by law.¹⁹⁷

The operation of the support system is governed by the Act on the Reception of International Protection and the Identification and Help of Victims of THB and the Assistance System of the Victims of THB receives new customers with a low threshold. The system of assistance does not depend on whether the victim commits himself or herself to witness the offender when investigating or prosecuting a crime.¹⁹⁸ Recovery time is for the victims who are extremely scared and traumatized or in weak condition and are not capable or willing to co-operate with the authorities to solve the crime and convict the traffickers. During the recovery period, a victim of trafficking can rest, recover, and consider whether he wants to cooperate with the police or other pre-trial investigators.¹⁹⁹

¹⁹⁶ Act on the reception of international protection and the identification and assistance of the victims of trafficking in human beings, Chapter 4, Section 33§

¹⁹⁷ Ihmiskauppa.fi. (2017). supra note 58, 4-5

¹⁹⁸ Ibid. 9-10

¹⁹⁹ Ibid. 7

The victim assistance center of Joutseno operates nationwide, but it is problematic, what matters here is that the municipalities themselves should be responsible for assisting residents and Finnish citizens living in municipalities, but practice is something else. It is shocking how much the asylum seekers' reception system is emphasized and it is also reflected in the chapters of how much the aid system has asylum seekers and how much the other victims? This can justifiably question and reflect on the point of view of how reasonable this site is and what it tells us in a way from our system and what kind of victims are identified and guided to the system. The conflict is that a refugee center works as an assistance center for victims of human trafficking.²⁰⁰ The key problem probably is the number of asylum seekers, underlined in the system and other victims prove to be weaker. The municipal side is to keep the reinforcement says Roth, could be a sensible course. As well as the non-governmental organizations (NGO) should offer help for those victims who do not want to the assistance system and take a part to the criminal process. It is bound to develop in this direction.²⁰¹

The author argues that when the assistance system is tied to the criminal process the victims are dependent of the conduct of the trial. The victims who are willing to go through the difficult and insecure process to access to the assistance system and get the help and aid. If the criminal proceeding advances to the prosecutor, the victims' will get the residence permit and aid during the process but if the judgement comes as related crime such as pandering the victims fall out of the assistance system and may end up back to exploited or something worse. The assistance should be unconditional, the victims have gone through difficult times and the least they should be thinking is new conditions to get new beginning to their lives.

Most of the victims in the assistance system are asylum seekers which is problematic for the other victims such as Finnish citizens. The assistance should be more available for the victims who are not willing to report a crime and go through the criminal process. The approach should be more victim centered and think more about the people who have went through years of exploitation. Without the victims there is no crime and offenders who to convict. THB as a whole is wide and complicated concept which is difficult to comprise by the authorities. Everything is based on knowledge of the authorities and by authors opinion the ground level such as police, prosecutors,

200 Venla Roth. (2018). *supra* note 100

201 *Ibid.*

judges and other influential people related to human trafficking should be educated and specialized on the field to process the crimes and cases concerning human trafficking. The assistance system is completely reliant of the legislation acts, authorities and the decision makers and as an idea the assistance system is a functional entity but in practice the system is not very reliable for the victims. The author argues that the approach should be more victim centered and edge the criminal process approach, the victims would co-operate more willingly without strict conditions and uncertainty of the future.

3.4 Analyzing the Enhanced Action Plan against Trafficking in Human Beings

The number of observed human trafficking cases until 2010 has been quite low.²⁰² By the beginning of 2008, there had been only 15 cases where a criminal investigation relating to human trafficking was initiated either by the police or by the Border Guard (Ministry of the Interior 2008).²⁰³ By the beginning of 2009, there was only one legally valid court verdict on human trafficking (District Court of Helsinki 2006; Court of Appeal of Helsinki 2007).²⁰⁴ Ending human trafficking would require completely abolishing demand and sources, which in the current state of the world seems quite unrealistic.²⁰⁵ Diminishing human trafficking, however, can be achieved.²⁰⁶ It requires effective legislation, trained individuals in all fields, changes in public attitude, raising awareness and open discussion, and the public's will to help one another.²⁰⁷ Victims need to be protected, assisted and supported effectively on a practical level.²⁰⁸

In July 2006, the Helsinki District Court issued the first judgement on THB in Finland history (*R06/5204 20.7.2006*).²⁰⁹ In this case, a criminal organization comprising Estonian and Finnish

202 Minna Viuhko. (2010). supra note 16, 64

203 Ibid.

204 Ibid.

205 Sari Latomaa. (2014). supra note 48, 264

206 Ibid.

207 Ibid.

208 Ibid.

209 Minna Viuhko. (2010). supra note 16, 64

criminals and led from Estonia, deceived a mentally disabled Estonian woman into travelling to Finland by offering her a job as a nanny.²¹⁰ In reality, the woman was forced into prostitution. In this case, four Estonian men, one Estonian woman and two Finnish men were convicted in the District Court of aggravated human trafficking and aggravated procuring.²¹¹ In the Court of Appeal, the conviction of the four Estonian men was upheld, but the convictions of the two Finnish men were converted to aggravated procuring and the conviction of the Estonian woman was changed to aiding and abetting in aggravated human trafficking.²¹² The woman who was convicted was also engaged in prostitution under the control of the same organization.²¹³ The Supreme Court confirmed the decision of the Court of Appeal in the summer of 2007.²¹⁴

To date, it seems that only the very obvious cases meet the evidentiary criteria for human trafficking required by the Finnish courts.²¹⁵ Drawing on the first Finnish conviction for human trafficking, Roth states that the court gave decisive weight to the alleged initial voluntary position of the women.²¹⁶ The consequence of such court interpretations may be that victims of human trafficking will not be recognized and identified in the future and therefore they are not likely to benefit from support mechanisms.²¹⁷

According to Finnish Government Program on Combating Trafficking in Human Beings 2016-2017, the action plan against Trafficking in Human Beings in Finland has listed identification and assistance of victims of THB one of the development areas.²¹⁸ Has been regarded as a good starting point in accordance with the international examples in use, to record the National Identification and Control System for Victims of Trafficking in Finland. First of all, this will make it possible

210 Ibid.

211 Ibid.

212 Ibid.

213 Ibid.

214 Ibid.

215 Ibid. 65

216 Ibid.

217 Ibid.

218 Sisäministeriö. (2016). *supra* note 78, 15

for all co-operatives to obtain information on prevailing practices and to enable the development of such arrangements in the second stage.²¹⁹ The development of the identification of victims of THB requires, inter alia, more attention to the different aspects of THB and further development of cooperation between organizations and authorities.²²⁰ Increase nationwide and regional training, in particular to identify and investigate THB related to sexual exploitation in basic and continuing police training.²²¹ It is also important to cooperate with the municipal sector.²²² Assistance services to permanent residents of different municipalities or to foreigners with a residence permit for victims of trafficking.²²³ Thus the Joutseno assistance center is for asylum seeker victims of human trafficking and hence does not serve victims who has a permanent residency in Finland argues the author.

In authors opinion these are the most important development sectors considering the issue of human trafficking in Finland, therefore the author wants to bring this up among other development requisites in the action plan. Although the other sectors are also important but in these parts the author sees the most deficiencies. The crimes of the human trafficking are investigated in the local police. There are also specialists National Bureau of Investigation who are specialized in THB. Police work against human trafficking is coordinated by the National Police.²²⁴ In addition, national and local police training on THB will continue to be developed. In this training, special attention should be paid to the identification and investigation of THB related to sexual exploitation.²²⁵

Roth argues that the implementation of the adopted obligations, such as the 2011/36/EU Directive, has, however, remained ineffective. The anti-trafficking strategies and activities can possibly achieve their goals, if states adopt a victim-centered approach to trafficking, as well as regularly

219 Ibid.

220 Ibid. 16

221 Ibid. 25

222 Ibid. 16

223 Ibid. 17

224 Ibid. 25

225 Ibid.

evaluate the effect these strategies and activities have on the human rights of trafficking victims.²²⁶ Several international and regional legal instruments have been adopted against THB. In terms of human rights law, these legal instruments are powerful and remarkable achievements, as persons identified as victims of human trafficking are entitled to assistance and protection measures provided by the state. The implementation of these legal instruments has, however, proved to be challenging all around the world.²²⁷ These challenges are manifested by the large disparity firstly between the estimated number and the actual amount of identified and assisted victims of human trafficking and secondly between the estimated trafficking cases and investigated or prosecuted offences.²²⁸

It is at least questionable how victims should be assisted in Finland.²²⁹ The existing framework at international, regional and domestic levels shows that the main concern of governments seems to lie within law enforcement rather than the protection and assistance of victims.²³⁰ It is linked to the question of how the criminal process and the victims aid are interconnected. This is how Roth interprets these instruments, she thinks that when is capable of making a limitation on those does not have permission to reside in Finland, so it will be able to attach, for example, a reflection period and, above all, a residence permit for the victim depending on the criminal process. In the light of these instruments, the help and the criminal process cannot tie together, as with those who legally reside in the country. The victims will be forced out of the help system if the criminal proceeding does not proceed or if the offense is being investigated as another offense or commenced as human trafficking, but the judgment comes some other as pandering.²³¹

Roth argues that one of the most important reasons for the low number of identified trafficking victims, investigations and prosecutions is the strong link between assistance and criminal

226 Venla Roth. (2016). *supra* note 20, 108

227 *Ibid.* 86

228 *Ibid.*

229 Venla Roth. (2018). *supra* note 100

230 Adriana Ferreira Dos Santos Norbert Costa. (2015). The Need to Integrate a Human Rights Perspective into the Irish Initiatives Combating Human Trafficking, 14 *Hibernian L.J.*, 75-95, 76

231 Venla Roth. (2018). *supra* note 100

proceedings. The assistance available to the victims is often conditional and depends on the result of the criminal proceedings.²³² In Finland, it is the criminal proceedings that determine whether the victim will receive assistance or not and how long. Because of this strong link between assistance and criminal proceedings very few victims of human trafficking seek assistance from the Finnish authorities.²³³ What prevents the victims getting the help is largely the kind of questions about how tempting is a system that is tied up to the criminal process and contains so much uncertainty as to who gets help and what happens after that. People expose themselves to a lot when they are directed to the assistance system, but no one can give any guarantee, not even that the help will continue.

Although the threshold for the system of assistance is low, it is entirely dependent on the factors outside the scope of the victims, as what crime it is investigated, whether it is investigated, whether it is brought to the prosecution, what is being prosecuted, and in the end, what crime it is judged, e.g. the District Court sentenced a person exploiting the victim for human trafficking and the sentence was upheld by the Court of Appeal. However, the sentence for human trafficking was overturned by the Supreme Court. Even though the defendant was sentenced for several sexual offences, the victim was removed from the special assistance system for victims of human trafficking. The victim died a few months later. She was an ordinary Finnish woman of young age. This is a good example of where these can lead in the worst case.²³⁴

After a terrible experience the people are abandoned completely and in the end is found that it is not human trafficking. The system is completely unforeseeable and completely beyond the influence of the victim, what is happening. Obviously, this is not the case for maintaining confidence in the government system and in any case wanting to go into this system.²³⁵ Article 11 (3) of the Directive 2011/36/EU on that aspect underlines the fact that assistance and support for a victim should not be made conditional on the victim's willingness to cooperate in the criminal investigation.²³⁶ The author argues that in many Member States the victims will not be welcomed

232 Venla Roth. (2017). Accessible: <https://www.syrjinta.fi/web/en/-/senior-inspector-venla-roth-s-speech-at-the-annual-colloquium-on-fundamental-rights-at-brussels-the-21st-of-november-2017>, section 2, 20 April 2018

233 Ibid. section 5

234 Venla Roth. (2018). *supra* note 100

235 Ibid.

236 Venla Roth. (2016). *supra* note 20, 108

to the assistance system if they will not cooperate with the authorities and Finland is not clearly following the given instructions of the Directive thus there is conditions to access to the assistance system. By not recognizing the victims as human trafficking engaged to prostitution they are often criminalized or treated as illegal migrants. The Non-Discrimination Ombudsman has noted that in some cases in Finland the condition for access to the assistance system is the obligation to report the crime.²³⁷

The author argues the victim identification and assistance of victims of THB are the two main issues in Finland, but these two issues cannot be amended without viewing the issue more widely. The author wants to point out that the indistinct and revised legislation of the Criminal Code and the Act on the reception of international protection and the identification and assistance of victims of trafficking complicate the interpretation in practice. The identification and the assistance of the victims are interconnected to the criminal process and the revised Criminal Code is still difficult to decipher.

The author argues that the victim centered approach, more tempting and guaranteed victim assistance system could change a lot. The ground level authorities such as police, prosecutors and judges must be educated specifically to handle human trafficking cases to avoid possible mistakes of interpretation the legislation. All the development areas are connected to each other states the author, e.g. the victim's identification is connected to the authorities and the problem area in the authorities is the ignorance of THB. The more educated and specialized the authorities are the easier the victim's rights are realized. The whole concept of THB is complicated and difficult to interpret thus it consist of many areas which together formulates the main issues such as the victim centered approach and the interconnection in the criminal process and the victims' assistance states the author. The system is problematic thus many cases with human trafficking features has been convicted as related crimes such as pandering, is tremendously life changing for the victim. If the conviction comes something else than human trafficking the victim falls out of the assistance system and might end up back to the exploitation. In authors opinion everything is about the victim assistance, but the current approach is more criminal process based which leads to the main issue; the lack of recognition of the victims of THB for sexual exploitation. The victims are not willing to expose themselves for the system which does not have any guarantee.

237 Vähemmistövaltuutettu. (2010). *supra* note 21, 55

CONCLUSION

The ignorance of the authorities on the reformed national legislation and its interpretation and application has proved to be a major problem and is linked to many aspects of anti-trafficking activities in Finland. The action against THB will certainly be improved when the authorities are properly educated and Finland has more specialized people on the field of THB. The revised Criminal Code is young and since the amendment in 2015 when it entered into force, has not been any cases concerning THB, hence the authorities have not been able to take advantage of it yet. The amendment concerning overlap of pandering and human trafficking sections in Criminal Code is a major change and have a tremendous affect to proceeding cases in future until the authorities are trained to handle the cases. Finland needs effective training for the specialized ground level authorities to combat against human trafficking who interprets the complicated area of law.

The interconnected criminal process and the victims assistance is a problematic issue thus the victims may not want to start fighting against their exploiters. The victims may feel insecure and scared which often affects to their willingness to start the process and turn towards the authorities. The insecure system does not encourage the victims to start the criminal process thus they might end up falling out of the system if the proceeding does not move forward the way is expected. The process may lead the victims into worse situation where they started. If the process does not proceed and the exploiters are not convicted, the victims may end up back to their exploiters crib, they may be banished from the country, in the worst case they may even end up dying or the exploiters may harm their families. In the authors opinion the victims usually do not want to these situations and they rarely want to press the charges against the exploiters and this leads to the answer why victims of THB for sexual exploitation are not recognized very often.

The victims' assistance system access new victims with low a threshold, but the problem is not the accessing, the problem is staying in the system. The system is interconnected with the criminal process as the author mentioned above and the system is insecure for the victims' point of view, thus it cannot guarantee anything. If the criminal process is not proceeding as was expected and the victims are seen as regular prostitutes or if there is not enough evidence of human trafficking, are the victims seen as normal people who are not liable to have the help the system is offering, hence they fall out of the system and may end up back in to the exploiters. There should be a guarantee in the system which arranges assistance and aid for the people who fall out of the

victims' assistance system because of lack of evidence or for some other reason, the system is too black and white. In the authors opinion this current system should be modified the way the victims' get a guarantee of assistance and aid although they are not recognized as victims of human trafficking thus it has however proved certainly challenging, this would gain the victims' trust towards the authorities. Hereby a step forward is worth of taking a risk in the criminal process if the victims does not need to be afraid of falling out of the assistance system.

Finland should not be a country who abandons the victims if they do not appear to be victims of human trafficking, the other ways should be able to arrange for the ones why does not fit in the square the assistance system sets. It is also a major reason to get help if the person is a victim of pandering or some other exploitation, they may be traumatized or feel threatened and to be a victim of THB should not be the only way to receive assistance.

In conclusion Finland has not achieved the required level of the Directive 2011/36/EU in implementation of the national legislation. This reflects as problems the author mentioned in the earlier chapters as the practical implementation and interpretation of the law is difficult for the authorities. The issue derives from the ignorance of the law or the lack of education and specialized authorities, the legislation may also be indistinct, and the legislation needs clarification. In the authors opinion Finland does not follow the Directive and fulfill the obligations completely e.g. the victims' identification and the access of the victims' assistance system. The victims' identification and the access to the assistance system has proved to be the main issues and it is the outcome of all shortcomings in the national legislation and inadequate implementation of the Directive. The Directive emphasize that the victims should access with low threshold and not to require co-operation with the pre-trial investigation authorities or the other authorities, but the criminal process is strongly interconnected to the victims' assistance thus in this regard Finland has not accomplished the implementation of the Directive. On paper Finland fulfill the requirements of the Directive but the achievement has proved ineffective.

SUMMARY

This thesis argues about trafficking in human beings for sexual exploitations and forced prostitution in Finland and how the Directive 2011/36/EU on prevention and combating trafficking in human beings protecting its victims has implemented to Finnish national law, more specifically to Finnish Criminal Code? The thesis is studying what are the main problems of the implementation the Directive and what are the measures the problems are emended?

In this thesis the author studied the realization of the sections of trafficking in human beings of Finnish Criminal Code and Act on the reception of international protection and the identification and assistance of victims of trafficking compared to EU legislation, the Directive 2011/36/EU on prevention and combating trafficking in human beings protecting its victims. With this research the author explains the main issues and the resolutions the author has become. The subject is viewed in national and international point of view, the national point of view is the Finnish Criminal Code and the International point of view is the EU Legislation and the Directive 2011/36/EU. The main concentration is a victim centered approach and the assistance system of the victims of the trafficking in human beings (THB) for sexual exploitation. The author studies the effectiveness of the current legislation concerning human trafficking and purchasing of sex and the reasons why very few victims are identified and access to the victims' assistance system.

The author argued that the biggest problems are that the assistance system is interconnected to the criminal process and the revised Criminal Code have major challenges in interpretation and application in practice. These together constitute a problem in identifying victims and guiding the victims' assistance system.

Finland has not achieved the required level of the Directive 2011/36/EU in implementation of the national legislation. This reflects as problems the author mentioned in the earlier chapters as the practical implementation and interpretation of the law is difficult for the authorities. The issue derives from the ignorance of the law or the lack of education and specialized authorities, the legislation may also be indistinct, and the legislation needs clarification. In the authors opinion Finland does not follow the Directive and fulfill the obligations completely e.g. the access of the victims' assistance system. The Directive emphasize that the victims should access with low

threshold and not to require co-operation with the pre-trial investigation authorities or the other authorities, but the criminal process is strongly interconnected to the victims' assistance thus in this regard Finland has not accomplished the implementation of the Directive.

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