

Speaking notes by Maria Grazia Giammarinaro

As Special Representative of the OSCE for combatting trafficking in human beings, and as UN Special Rapporteur on trafficking, during ten years I have carried out extensive research, visited many countries, and presented several reports touching upon various aspects of trafficking.

During so many years, no evidence was found that a certain legislation on prostitution contributed to increase or decrease trafficking. As a matter of fact, trafficking exists everywhere, and official figures for sure underestimate its actual dimension. Estimates issued by ILO, Walk Free and IOM show that - although there can be doubts regarding regional distributions - forced labour including in the context of trafficking is for sure a massive phenomenon, amounting to 50 million people out of which 28 million people are in forced labour, which in the ILO concept includes forced commercial sexual exploitation, and 22 million people are in forced marriage.

According to all official UN documents, including the UNODC Global Report, and the Reports of UN Special Rapporteurs, and according to the CoE Reports of GRETA - the CoE body monitoring the implementation of the CoE Convention on action against trafficking - data on victim identification and prosecution of perpetrators are still low. Therefore no assumption on the real size of trafficking and its trend can be based on official statistics. For example, an increase of trafficking cases at the national level can indicate not an actual increase of trafficking but rather an increase of attention and successful action by the competent authorities. And of course the opposite might also occur.

In fact, no UN Special Rapporteur - including myself - has ever tried to assess the real dimension of trafficking in human beings. It is even harder - if not impossible - to assess changes produced by a certain legislation on prostitution at the national level in the short term. Unfortunately, anecdotal evidence shows that traffickers are able to adapt their strategies to different laws and regulations in this matter.

Such considerations, based - I insist - on official documents of international organisations, suggest a cautious approach to any conclusion on the impact of criminalisation of the knowing use of goods and services produced or offered by trafficked persons. Studies carried out in countries in which such laws have been passed reflect different ideological approaches and reach different and even opposite conclusions.

On the contrary, there are clear indications that in such countries, there is poor or no implementation of the knowing use of goods in sectors other than commercial sex. Moreover, where users of sexual services are criminalised, although women and other persons selling sexual services are not criminalised, the mere fact that every other behaviour around prostitution is criminalised, has negative consequences on the lives and rights of sex workers and persons including LGBTQI+ persons selling sexual services, and among them unidentified victims of trafficking and vulnerable persons, especially undocumented migrants.

First consequence: persons selling sexual services move to more isolated and unsafe places, where they are exposed to violent behaviours, and not only of clients. Otherwise they are compelled to move indoor, where it is more difficult to ask for help in case of danger, and it is more difficult for NGOs and public services to reach them out. Therefore, by increasing the area of illegality around prostitution, including by criminalising clients, the unintended result is to make more difficult the identification and referral of victims of trafficking.

Secondly, by criminalising the users of sexual services, the actions of investigators have been inevitably oriented against the easiest target, while criminal networks running trafficking and individuals or groups exploiting trafficking victims continue to vastly enjoy impunity. On the contrary, emphasis should be put on the prosecution of traffickers and exploiters, and on actions aimed at strengthening investigative methods such as those used against organised crime.

Experience shows that it is not possible to adopt simultaneously both approaches, for they are based on different assumptions. The Nordic Model aims primarily to eradicate prostitution, and considers that trafficking will be equally eradicated as a result. The second approach, on the contrary, identifies the prevention of and fight against trafficking as a priority, and avoids any conflation between trafficking and prostitution.

However the Nordic Model, where it has been adopted, has monopolised the public discourse, has produced stigmatisation not only of users but also of people in prostitution and, importantly, has overlooked trafficking as a gross human rights violation and a political priority.

Therefore I regret the the Commission has not taken the opportunity of the revision of Directive 2011/36/EU, which remains a good piece of legislation by the

way, to introduce more detailed and effective provisions on victims' rights such as assistance and support, non-punishment of victims, compensation, residence permits, and prevention.

Third and last consideration. From a feminist point of view, criminalisation of users is not the only possible approach to prostitution and trafficking. As a matter of fact, feminist groups and movements are divided on this issue. One part of the feminist movement - that I don't agree with - adopts an extended concept of violence against women, and considers any forms of selling and buying sexual services as violence. As a result, the consent of women concerned would be - according to this approach - always invalid. This orientation is close to the so called "punitive feminism" that tries to introduce social change through a symbolic use of criminal justice, in this case through the punishment of clients.

A different feminist approach - which I join - emphasises not the punishment of men, but rather the human rights of women, and advocates measures aimed at improving their lives and valuing the personal autonomy and agency of sex workers and of all persons selling sexual services including trafficking victims. At the same time, this feminist orientation implies the adoption of a pragmatic approach to criminal justice, and underlines the need to strengthen the fight against trafficking networks and individual exploiters.

I am convinced that these are the real priorities, and this assumption implies that, from my feminist point of view, it is not consistent with a human rights approach to pass legislation that, in the name of women's dignity, may disrupt their lives and expose them to the risk of serious harm.

Therefore the principle "do not harm" should suggest leaving the provision on criminalisation of clients as it stands, as a non binding provision, in the Trafficking Directive. Moreover, I would not conflate the notions of violence and exploitation, which are substantially different from a legal point of view, and thus I would avoid the introduction of a provision implying the criminalisation of users also in the Directive on violence against women.